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POLITICAL CONTROL OF PRIVATE INCOMES AND ITS EFFECT UPON GOVERNMENT

THE prosperity, even the life, of every community depends upon the degree of success which it is able to achieve in meeting its essential wants. As far as we can see, no one of the Western nations can ever be totally without food, but the supply may be so inadequate as to cause great suffering, even rising at times to famine proportions as was frequently the case in all nations of Europe before the abundance of the nineteenth century. In a general way, then, a nation depends upon its successful business to supply, as far as possible, what is needed for its existence, health and welfare, and upon all services which contribute to the efficiency of its supplies, such as transportation, banking, medical care, and so on. All these activities, coming under the head of liberty, were protected by the American Constitution, and as far as concerns taxation, which can be so exercised as to become a power to destroy, the practice was to tax equally all subjects upon which the burden of the tax fell. Under this system America in less than five generations became the richest as well as the most prosperous and powerful nation in the world.

Conditions of life in western Europe and in countries bordering on or near the Mediterranean Sea differed in classical and mediaeval times from the conditions with which we are familiar at the present day, chiefly in two important respects: the question of the food supply and the means by which individuals could acquire wealth. The present article concerns the second of these two differences.

The classical world of two thousand and more years ago was

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dependent upon hand labor [1]—they could not even shoe a draught animal, nor put a harness upon a horse—and hand labor, unaided by any other power, can make no man rich. Men who amassed wealth in those times were tax-farmers, governors of provinces, successful warriors, and so on, who by their authority could take the small earnings produced and saved by others, to which they themselves contributed nothing. Private fortunes created by personal enterprises began their rise when, in the thirteenth century of our era, the rudder hinged to the sternpost of a sailing vessel was invented and put into use.[2]

Whatever the nations of classical antiquity knew about the art of navigation, they learned on the waters of the eastern Mediterranean, of which Professor J. Holland Rose says that nowhere else were waters so safe and climatic conditions so favorable for vessels propelled and steered by oars.[3] Besides the boats so moved—which would today be regarded as hardly more than glorified canoes—some ancient vessels spread a sail on a mast raised amidships, occasionally reinforced by smaller sails; but the wind is a great power, and unless breezes are very light and a ship quite small, it would be, when under sail, far beyond the control of a steering oar or oars.

No such gentle conditions as those of the eastern Mediterranean prevailed along the coasts of northern Europe, but nevertheless, as populations grew, these northern waters had constantly to be traversed by swift ships carrying heavy cargoes. Such ships were necessarily driven by sail, for no other power

[1] *La force motrice animale à travers les âges* (Paris, 1924) and *L'attelage et le cheval de selle à travers les âges* (Paris, 1931), both books by Commandant Lefebvre des Noëttes. As to the great value of des Noëttes' contributions to history, see "Les techniques, l'histoire et la vie", by Marc Bloch, and "De l'origine de l'attelage moderne", by André-G. Haudricourt, both articles in *Annales d'histoire économique et sociale*, No. 42, 30 November 1936. "Do We Know All about Slavery?" by Ernest Stuart Bates, *The Contemporary Review*, March 1940.

[2] *L'art nautique dans l'antiquité*, by Jules Vars (Paris, 1887), p. 127. "The Ships of the Ancients", chap. iii of *The Voyage and Shipwreck of St. Paul*, by James Smith (London, 1848), pp. 143-147. In regard to the author, "Smith of Jordanhill", see D.N.B., vol. 18, 1921-22, pp. 467-468. The book "is generally recognized as a standard authority on ancient shipbuilding and navigation." *Ibid. Sailing Ships and Their Story*, by E. Keble Chatterton (London, 1909), pp. 154-156 *De la marine antique à la marine moderne*, by Lefebvre des Noëttes (Paris, 1935)

[3] *The Mediterranean in the Ancient World* (Cambridge, England, 1934), p. 2.

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was available by which they could be moved. Putting, therefore, constantly increasing reliance upon the motive power of the wind, the continual efforts of navigators so to shape, place and use the oar or oars as to enable the sailor to increase the size of his ship, at the same time that he maintained full control of its course, finally showed that a sternpost, to which an efficient rudder could be hinged, had become a necessary part of ship construction. The ignorance of the times, nevertheless, was such that no person acquainted with the facts—boatman or other—could leave to subsequent ages any written description of this evolution of the stern rudder. Fortunately, however, not a few towns from which had come the navigators who had been pioneers in this work represented on their town seals the great achievement of their citizens. Among these towns are Ipswich, England, whose seal showing the hinged rudder dates from about 1200 A.D.; Elbing, West Prussia, 1242 A.D. or earlier; Wismar, Mecklenburg-Schwerin, 1256 A.D. or earlier; Damme, Flanders, 1309 A.D.; Stubbekjöbing, Denmark, thirteenth century—thus marking a new method of ship construction and navigation which soon was used on all European ships. The stern rudder, therefore, came into use during the thirteenth century although, as stated in the *Encyclopaedia Britannica*,[4] it is impossible to assign more closely any definite time when it displaced the steering oar. The modern art of navigation is thus a new departure in marine practices, not a development of methods known to classical times, or to those who followed these methods in Europe during the first 1200 years after Christ.

It took time to learn how sailing vessels should be built, rigged and steered, so as safely to navigate the high seas, but the commerce of the Hanse towns in northern Germany, and the expansion of European trade, showed that men were learning all this, and the discovery of the Americas and West India islands in 1492 by Christopher Columbus, of the Cape of Good Hope by Bartholomew Diaz in 1487, the doubling of the Cape by Vasco de Gama in 1498, and the small beginnings of the Fugger fortune, all in the fifteenth century, showed what the power of the wind—which Aristotle regarded as the mightiest power

[4] *Ency. Brit.*, XI edition, article entitled "Rudder". See also *Inventing the Ship*, by Seabury Colum Gilfillan (Chicago, 1936), pp. 56-57.

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moving upon the surface of the earth—could do for navigation when applied, as men could apply it by means of the hinged rudder, to the art of sailing ships.

It might well be that the greatest discovery ever made by the human intellect came when men learned that free enterprise creates wealth far greater than the sum of all the savings which in former ages were taken by grasping authority from the patient hands of savers. When a Roman officer took the petty accumulations of a Syrian trader or an Italian farmer, the officer had the money and the trader or farmer had empty hands. That was all there was to it. When Caesar took the great Toulouse treasure [5]—and there may well have been treasure at Toulouse as elsewhere—it thereafter belonged to new owners, nothing more remaining to be said. When, however, European goods were put on board a sailing ship for transportation to Asia, the goods had an added value given to them by the new uses to which they would be put by Asiatic buyers, and when silks, tea and spices were loaded into the ship for the return voyage, they also had increased value for use in France, Flanders, Britain or elsewhere. It was in the fourteenth and fifteenth centuries, as Arthur Bryant recently said, that the English turned their attention "towards the oceans" and "saw an immense, if gradual and often interrupted, growth of English private wealth and activity." [6] Both buyers and sellers were richer for the rise of commerce, and the Fugger fortune—great as it may have become—was but a small incident of the general profit in which continents shared.

The use of the wind, then, was the first great advance of a progress which has never ceased. It was followed by the advance of mathematics and the useful arts, of which Henry Hallam gives brief outlines in his *Literature of Europe*, and which Professor Herbert Butterfield has described in his excellent book, *Origins of Modern Science, 1300-1800*,[7] made fascinating by its outlook upon causes and results in modern Europe.

[5] Strabo, *Geography*, Lib. IV, cap. 187, 188, 189 (Loeb Library, vol. II, pp. 205-207); for comment upon this passage see *A Dissertation on the Numbers of Mankind*, by Robert Wallace (Edinburgh, 1753), p. 70.

[6] *Illustrated London News*, July 5, 1952, p. 6.

[7] London, 1950.

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Sailing ships and progress. The first great basic power of which man acquired ability to make familiar use was the pressure of wind upon sails. As ships developed, moved by the wind and steered by the hinged rudder, the art of building and of navigating sailing ships advanced, and commerce in the fifteenth century became the source of increasing wealth in all parts of Europe, the most famous example being the rise of a Swabian family, descendants of Johannes Fugger, a weaver of Augsburg, a city in Bavaria about 35 miles northwest of Munich, who through their commerce " acquired enormous wealth and rose to high rank in the state." [8] Over a hundred years ago Alexander von Humboldt said of advances at that time that

> at no other period have discoveries in the material world of space called forth more extraordinary things in the manners and well-being of man, and in the long-enduring condition of slavery of a portion of the human race, and their late awakening to political freedom; nor has any age afforded so large an extension to the field of view by the multiplication of products and objects of barter, and by the establishment of colonies of a magnitude hitherto unknown.[9]

Progress four hundred years ago could not be as great as that of the nineteenth century, of which Dean Inge said, " there were giants on the earth in those days," but it was great indeed compared with all that had gone before, since it was the opening to Europeans of the western hemisphere, it brought Asiatic commerce to their doors, and in its full effect disclosed to their minds the place of this world in the solar system, which Galileo, not long after the death of Columbus and the beginning of world navigation, had begun to teach. The crystal spheres which had carried the firmament around the earth had begun to disappear and in their place there came knowledge of an infinite cosmos described, as far as is known to us, in terms of light years. The period of world commerce by sailing ships was in fact the beginning of what later was called " progress ".

Three periods of mechanical power. Our civilization depends upon a constant supply of great basic power to keep its essen-

[8] *Ency. Brit.*, IX edition, vol. IX, p. 811.

[9] *Cosmos*, tr. by E. C. Otté (New York, 1860), vol. II, p. 229.

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tial activities going, and should these basic powers fail, mankind would fall back to the conditions of life in the days of hand labor and slavery of the white man as well as of the colored. It was the sailing ship which freed the galley slave, and later it was the steam engine and internal combustion engine which freed man from the slavery of labor which the demands of the race had imposed. As Professor William Graham Sumner, of Yale University, said—slavery of the white man was done away with, not as the result of rising moral sentiment, but because, as compared with new mechanical methods of production, slavery was inefficient and costly. "One thing only can be affirmed with confidence; that is, that as no philosophical dogmas caused slavery to be abolished, no philiosophical dogmas can prevent its reintroduction if economic changes should make it fit and suitable again." [10]

Every acquisition of great power raised the level of human existence to a higher plane, increasing the comforts, wealth and supplies of life and in the end widening the field of thought, introducing new speculations and often producing inventions in subjects that had been beyond the horizon limiting the previous outlook of the race. These acquisitions of power distinguish the three periods in which they were first used: the period of world commerce by sailing ships, having its very first beginning in the thirteenth century; the period of the steam engine, beginning in the eighteenth century, greatly developed in the nineteenth century and still existing; and the period of the internal combustion engine—the motor age—beginning near the end of the nineteenth century, which gave us flight and the motive power for small vehicles—automobiles, motor boats, and so on—and many other services whose influence has hardly more than begun.

Sailing ships are now to a large extent superseded, but only because the advance of knowledge has brought other great powers to the service of mankind.

These sources of power have so entered into the daily life of all Americans that it is hard to see how civilization could continue without them. The trains of the New York Central Rail-

[10] *Folkways*, by William Graham Sumner (Boston, 1907), chap. vi, Sec. 274, p. 266.

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road south of Harmon and of the Harlem Division south of North White Plains are operated by power which the Edison Company of New York supplies. The Edison Company supplies also about 40 per cent of the power used by the New Haven Railroad to move its cars in the city of New York and much of the power which operates the Pennsylvania Railroad in New York City. The subway trains of the city of New York are not entirely free from dependence upon the Edison Company; while factories, newspaper establishments, nearly all elevators in buildings, even refrigerators and carpet sweepers, electric lights in buildings and on the streets in all five boroughs of New York City and in Westchester County get their power from the same source. The same is true of telegraph and telephone companies though these companies to some degree maintain emergency equipment for use should the service of the Edison Company at any time be interrupted. We can hardly imagine the horsepower used for every individual in the city during every day in the year, though if it were worth while it could doubtless be computed. Moreover, there is hardly a town or city of any size in the country that is not, like New York City, dependent upon local supplies of power. The total production of electricity in the country in the week ending November 15, 1952 was nearly 8 billion kilowatt hours, an average during one week of nearly 53 kilowatt hours for every man, woman and child. We are all more or less dependent at all times upon power provided for us by private corporations, created by human genius and managed with great knowledge, skill and efficiency. Is there any danger that under changing conditions these corporations will not always be able to continue the service upon which we depend?

Wealth as a perquisite of absolute government. When acquisition of wealth was possible only with the aid of government powers of taxation, extortion and confiscation, all wealth ultimately belonged to the supreme power in the state—the emperor, or other ruler or rulers, with his or their favorites as long as they continued to hold approval of the existing powers by which they throve. When they ceased to have this approval, they lost their position and, sooner or later, lost the wealth that went with it. It was very difficult, therefore, for any private

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individuals to oppose the course of authority. Government control of wealth was itself a means of maintaining the power of the state and of crushing opposition. Under this system men could become rich only by some species of force or fraud, and this explains the statement in Matthew 19:24, repeated also in Mark and in Luke, that it is easier for a camel to go through the eye of a needle than for a rich man to enter into the kingdom of God. The text has seemed hard to understand, since in our days everybody seeks to increase his receipts, many would like to acquire capital, and none regard ownership of property as wrong in itself. The text, however, needs no explanation; for, in times when all production was accomplished by hand labor, with very little assistance from windmills, water mills, or animal power, riches were entirely in the control of the government. There were no honorable means by which a man could grow rich and no man had amassed wealth by other means than force, fraud or extortion. The text would not apply in our times to the cases where wealth had been secured by service to the community or by any other honorable method.

Acquisition of wealth and popular government. When private fortunes came into existence, wealth ceased to be an instrument of despotism and became an aid for citizens seeking to protect themselves and their community by checking courses of government which invaded private rights or endangered individual safety. The practical workings of a great democracy, the organization of, or resistance to, political measures, whether by mass meetings, radio, publications or otherwise, are all very expensive when appeal is made to a large number of voters, but this is the foundation of modern popular government, whether it be called republicanism or democracy—in any event it is private resources which give individuals the ability to perform the part of citizens in influencing the course of the government under which they live. Private wealth, therefore, is characteristic of the successful administration of modern democracy.

With the coming of machinery in the nineteenth century, possession of private wealth became widespread, and the constant shortages of supplies, of one kind or another, which characterize dependence upon hand labor, began to disappear.

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Moreover, machinery greatly increased production and one consequence of this increase was that wages rose. As Robert B. Dresser said, " the average American produces more and earns more than the citizens of any other nation, because he is assisted by a large investment in plant, equipment and other assets " which may, as in the railroad industry, amount to as much as $25,000 per employee—possibly even to more in some cases.[11] According to Willford I. King and Carl Snyder, " the dynamic force which lifted wages and made America the best place in the world to live, was constantly increasing capital investment which provided more and better tools for workers." [12]

The results which the use of machinery brings to its owner, however, depend upon what is done with the machines. One farmer, for example, sees in the reaper an opportunity to increase his income and save money, while another farmer uses it to make his life easier, and a third, after reaping, leaves the machine rusting in the field. The fact is that machinery, and all that goes to make progress, present an opportunity which can be improved only by effort, and unfortunately those who seek such opportunity are a small minority as compared with the whole population. The great problem of democracy is, therefore, to protect and keep, if it can, the national prosperity which only a minority have the genius and energy to create.

A great political prophecy. The future of America was the subject in 1815 of a political prophecy which is one of the most extraordinary instances of human foresight to be found in history. The prophecy was made by Louis Simond, an *émigré* from France at the time of the French Revolution, who had spent fifteen years in the United States before going to Great Britain in 1810, where, later, he published his book, *Journal of a Tour and Residence in Great Britain during the years 1810 and 1811.* This book was first published in New York in 1815 for the author by Eastburn Kirk; and at the same time was published anonymously in Edinburgh by A. Constable. These

[11] *Brief in support of proposed constitutional amendment,* by Robert B. Dresser, published by Committee for Constitutional Government, December 28, 1951, p. 8.

[12] *Extract from Hearings before Committee on Ways and Means,* June 30, 1947. Statement of Willford I. King, p. 28.

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publications were made, it will be noticed, twenty years or more before the publication of Tocqueville's famous book, *Democracy in America*. The second edition of Simond's book, which is the edition much the easiest to obtain, was published in Edinburgh and London in 1817 (2 vols.). The passage containing the prophecy to which reference has been made appears in all the editions above mentioned and reads as follows:

> The principal distinction in the United States is that of poor and rich. . . . A little more poverty in the multitude, and property will fall an easy prey by such means as an income-tax assessed arbitrarily by commissioners in support of any popular measure,—by the establishment of a national paper money,—by a *maximum* perhaps. The insecurity of property will then operate, as it has done everywhere, in Turkey, in Persia, for instance, and, in a less degree, in those parts of Europe, where the government could raise arbitrary taxes on industry, and where the administration of justice was dependent. The insecurity of property is invariably followed by relaxation of industry and improvements, ignorance and rudeness; and, finally, the establishment of a simple arbitrary government. It is no new observation that every revolution contains the seeds of another, most opposite in its nature, and scatters them behind it. We have to see what is to spring up in America from a purely popular revolution.[13]

Simond had had no small experience with democracy in France before he came to America and he had lived in this country for fifteen years. As the result of this experience it was apparently his belief that the controlling desire of democracy was for equality rather than for liberty. The comment of Napoleon at Saint Helena on this notion is that the best way to make everyone poor is to insist on equality of wealth,[14] an opinion in which Samuel Johnson agreed, saying that a general state of equality was a condition in which no persons are happy, and James Fenimore Cooper said that equality of wealth is incompatible with civilization and can only mean common misery; to which we may add the statement of Thomas Jefferson, that the natural progress of things is for liberty to yield and gov-

[13] Edition of 1817, vol. II, pp. 388-389.

[14] *The Saint Helena Journal of General Gourgaud* (London, 1932), p. 130.

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ernment to gain ground, so that in the end, as M. Simond says, the result of equality is " the establishment of a simple arbitrary government."

In 1894 a revenue bill was passed by Congress which provided for a graduated income tax (Act of August 27, 1894) such as M. Simond had anticipated. This tax was declared unconstitutional by the Supreme Court on April 8, 1895 in the case of *Pollock* vs. *Farmer's Loan and Trust Company*, 157 U. S. 429: Rehearing 158 U. S. 601 decided May 20 1895. Some members of the Court considered unequal taxation invalid, but since important parts of the law imposed direct taxes, not apportioned among the States as required by the Constitution, it was on this ground that the entire scheme of taxation imposed by this bill was held invalid. When William Jennings Bryan ran for president in 1896, there was much discussion of the Pollock case as well as a proposal that the currency should be inflated, as Simond had anticipated—in this instance the inflation to be accomplished by the coinage of silver in large quantities. That proposal was ended for the time by the defeat of Bryan's candidacy. On February 25, 1913, the Sixteenth Amendment to the American Constitution was adopted, authorizing imposition of income taxes without apportionment among the several States. There had been no decision, however, on the question of unequal taxation, and so, graded taxation not having been held illegal, it was enacted by Congress.

Passage thereafter of laws designed to promote the new social standard of equality in the ownership of wealth was made easier by the Seventeenth Amendment, adopted on May 31, 1913, which deprived State governments of the right to appoint Senators to represent their States in the United States Senate and provided that Senators should thereafter be elected by popular vote. By these amendments the whole operation and nature of the United States Constitution was changed.

The effect of these great changes was not seen while conservative presidents were in office, as was the case during the time of Woodrow Wilson, Calvin Coolidge and Herbert Hoover. In 1932, however, Franklin D. Roosevelt was elected, announcing the New Deal, and very soon heavy graduated in-

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come taxes and estate taxes [15] were imposed which, before long, amounted substantially to a confiscation of all large incomes and large estates. It was a demonstration of the truth of the statement by Francis Parkman [16] that the multitude desire equality more than they desire liberty. Liberty and equality, indeed, are inconsistent, each with the other, since liberty calls upon every man to make the most of all his powers while equality forbids him so to do. The rule of the New Deal, then, was to be the rule of equality, not the rule of liberty, and so it has proved.

Liberty of the individual is a limitation upon government and it has rarely been favored by rulers, either autocratic or democratic, past or present.

The old despotism now shows itself once more. With the amendments to the Constitution and the change in taxation, the conditions, so well known to the ancient world, are revived. Wealth is no longer possible to the individual but is on its way once more to be a perquisite of rule—a very fitting and indeed unavoidable addition to the powers of a government which no longer protects individual liberty. National ownership of wealth, however, is itself communism, to which all Americans are so opposed that we disapprove the employment of Communists by either State or Federal governments and believe that no Communist should teach in our schools or colleges. Nevertheless, as we well know, the number of Communist employees and teachers is constantly increasing. Herbert Spencer wrote from Fairfield, Pewsey, Wilts, on May 28, 1894, to James A. Skilton, at that time a well-known patent lawyer of New York, a letter which was published in *The Brooklyn Daily Eagle* eight years later, on October 13, 1902. In this letter Mr. Spencer expressed the opinion that the tendency toward socialism, in England, America and elsewhere, was irresistible, and in America would ultimately lead to a military despotism. As the *Encyclopaedia Britannica* says, " no very definite line of distinction between communism and socialism can be drawn," [17] and thus

[15] Taxation of decedent's estates is not a power given to Congress by the Constitution. It is not mentioned in the Sixteenth Amendment.

[16] *North American Review*, July-August 1878, vol. 127, p. 1.

[17] *Ency. Brit.*, IX edition, Tit. " Socialism ", vol. XXII, p. 207.

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the political leaders whom we elect incline more and more toward socialistic administration of their office and so are constantly nearer and nearer to communism—a course which, being too easily accepted as good American democracy, brings every day further advance toward the rule of ancient times that wealth shall be the property of government.

Under the Sixteenth Constitutional Amendment, perhaps with some aid from the operation of the later amendments, Congress has established a federal income tax which is no longer confined to large incomes but includes wages exceeding $50 a month in a scheme of taxation which makes saving very difficult [18]—probably impossible in a great proportion of cases—leaving the taxpayer, large or small, who is unable to provide for his own old age, to look forward to a time of want or of becoming the ward of government.

Easy money, Congressional appropriations and government borrowing. Under the influence of the ready money poured into the Treasury of the United States from the income of the nation, Congress has made great increase in the numbers—already excessive—of federal employees and has found that the corruption which so often attends the use of easy money is making its way into the ill-supervised actions of federal employes. Furthermore, Congress has pushed its control into branches of life over which the Constitution gives it no jurisdiction and has engaged in three great wars in which, if the money at its control had been less easy, it might not have found it necessary to engage. No one would have thought the Korean war, for example, necessary if Japan had been left with the power to defend itself, and the same may be said of the situation in Europe which has destroyed the main defenses against Russian advance.

During the eleven years—July 1, 1940-July 1, 1951—Congress spent 85 billions of dollars, a large part of this sum being spent in maintaining a fictitious foreign trade, for the political benefit of the administration, and then in 1952 the President presented a budget of 85 billions more, increased by supplemental, deficiency, and other requests to $91,287,080,872. Appropriations of the 82nd Congress at its first session were

[18] Informational Bulletin No. 181, September 1, 1952, also *Dissenter's Handbook*, both published by Paul O. Peters (Washington, D. C.).

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$91,626,541,716 and at its second session, including permanent appropriations, $82,899,550,884—a total peacetime record of $174,526,092,600.[19] For these figures I am indebted to Paul O. Peters, Editor of the *News Bulletin*, Washington, who adds the statement that if such expenditures had longer continued, they would have meant tax slavery for all and the end of personal liberty, freedom and opportunity. It is worth while, therefore, to consider what comes in when liberty and freedom go out, and what life holds for Americans when opportunity no longer exists. American currency is in process of rapid depreciation so that a dollar is worth about half what it was when the New Deal began, thus automatically increasing the burden of the surtax and including many persons who previously were not subject to surtaxes at all. On the 30th of June, 1952, the interest-bearing indebtedness of the United States stood at $259,105,178,785, an increase, according to the figures given in the *World Almanac* for 1952, of $3,883,201,790 since the end of June 1951. On the 28th of January, 1953, the United States Treasury Department stated in a published statement that the "total gross public debt and guaranteed obligations" was $267,295,081,183.16. To this, however, should be added the sum still unpaid on certain appropriations by Congress, which were approved by the President, as compensation for specified long-term contracts, chiefly for the military forces though part may possibly be for civil contracts, such, for example, as housing. The unpaid balance of these appropriations—which, on January 28, 1953, amounted to $112,325,886,248.65—is a binding, valid obligation on the government for the full amount of the unpaid balance. It takes years—not many, however—to build a ship or in other ways to perform these contracts, but they may all be finished before some now outstanding federal bonds shall mature. It would be better, therefore, if the Treasury, instead of stating the gross public debt at the lower figure, should give the full amount, which is $379,620,967,431.81.

Shakespeare, in speaking of "appetite"—the "universal wolf"—said in *Troilus and Cressida*:

[19] Informational Bulletin No. 147, July 22, 1952, published by *News Bulletin*, Washington, D. C., as revised by Informational Bulletin No. 250, December 12, 1952.

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Then every thing includes itself in power,
Power into will, will into appetite;
And appetite, an universal wolf,
So doubly seconded with will and power,
Must make perforce an universal prey,
And, last, eat up himself.[20]

The *Communist Manifesto,* put out by Karl Marx and Friedrich Engels, opposed the passing of property by inheritance and advocated a "heavy progressive or graduated income tax" as weapons to destroy democratic governments and pave the way for communism. This tax on income is now in operation in America, while a heavy tax is laid upon estates passing by inheritance, and together these taxes are having the effect for which they were advocated. Present taxes prevent saving by individual investors, and it is communism when government supplies the need of industries for capital. We can trace this progress in Britain. In 1946 and 1947, British taxes had so reduced the supply of capital that there was not enough to provide her industries with modern machinery and equipment; so, the sum derived from taxes being also reduced when there is nothing much to tax, Britain was on the verge of bankruptcy and asked American aid. This was given to the extent of $3¾ billions and, since a leaky pot can never be filled, Britain is constantly seeking more.

The Sixteenth Amendment was adopted to enable the government to place the chief burden of income taxes upon the receivers of large incomes, but the range and amount of the tax constantly extended until now it reaches the annual income exceeding $600 of unmarried persons and exceeding $1,200 of married persons.

A writer in an English magazine, Tracy Philipps, recently said of our Western civilization that, although each country should be "a community of participant wills", our society shows signs, nevertheless, of degenerating toward "unparticipant obedience"[21]—an unexpected description of life in a free

[20] Act I, Sc. iii, lines 119-124.

[21] "The Natural Sciences in the African Tropics", *The Nineteenth Century and After,* October 1949, pp. 233, 244.

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country. Political leaders of the twentieth century have advocated courses apparently influenced by the communistic teachings of Karl Marx and Friedrich Engels which for a time, now happily past, met high popular approval. In 1857, Thomas Babington Macaulay wrote that purely democratic institutions, wherever they prevail, must sooner or later destroy liberty or civilization or both and that America is no exception to this law.[22] The history of Germany and Italy showed what a tendency toward socialistic government could effect in overturning long-established institutions, and five or ten years ago there were Americans who thought that the situation which Herbert Spencer had described in his letter to Mr. Skilton—already mentioned—was becoming not wholly impossible in America.

This is the condition to which M. Simond looked forward a hundred and forty years ago when he said that insecurity of property is followed by relaxation of industry with all the consequences which attend such relaxation "and finally by the establishment of a simple arbitrary government." This, M. Simond says, is shown by the events of history, and if he is right and if the teachings of a few years ago had continued, we would expect that results would follow causes here, as in the countries to which M. Simond refers.

Very fortunately we now have reason to believe that the movement which seemed so threatening is losing its power. It was equal taxation that brought prosperity and progress to America, and we must expect that a return to this system would have again the results which equal taxation brought in the nineteenth century when it made America the most prosperous and powerful nation the world had ever seen. We believe that under the new administration the danger of "tax slavery" is past, that every effort will be made to defend constitutional democracy, and to protect liberty, freedom and opportunity.

E. PARMALEE PRENTICE

NEW YORK, N. Y.

[22] Letter to H. S. Randall, Esq., from T. B. Macaulay, Holly Lodge, Kensington, London, May 23, 1857.

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THE VICE PRESIDENCY

It has of late, Mr. President, become fashionable to attach very little importance to the office of Vice-President; to consider it a matter but of small consequence who the man may be; to view his post merely as an idle post of honor, and the incumbent as a cypher in the government; or according to the idea expressed by an honorable member from Georgia (Mr. Jackson), quoting, I believe, the language of some Eastern politician, as a fifth wheel to a coach.—Senator White of Delaware, December 2, 1803.

He did not wish to discuss largely the allusion of the gentleman to a fifth wheel. Were the subject to be confined to our own country, he should go fully into that subject; he wished not to afford any handle for the disrespect of foreign nations towards any part of our institutions.—Report of Senator Jackson's speech in reply.

1

"AT thirty minutes past midnight, this morning of Palm Sunday, the 4th of April, 1841, died William Henry Harrison, precisely one calendar month President of the United States after his inauguration." John Quincy Adams, the old man eloquent, noted the event in his diary, looked out the window, saw that the day was in every sense gloomy, and added: "In upwards of half a century, this is the first instance of a Vice President's being called to act as President of the United States, and brings to the test that provision of the Constitution which places in the Executive chair a man never thought of for that office by anybody." [1]

Six times since, the same provision has been brought to the same test. Presidents Taylor, Lincoln, Garfield, McKinley, Harding and Franklin D. Roosevelt have died in office and have been succeeded, respectively, by Vice Presidents Fillmore, Johnson, Arthur, Theodore Roosevelt, Coolidge and Truman.

How has the provision stood the test? The question has been

[1] *Memoirs of John Quincy Adams* (Philadelphia, 1876), X, 456, 457.

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more often posed than answered. Nor indeed is it immediately obvious how one should go about answering it. Shall we make comparisons, invidious or flattering, between our accidental presidents and our elected ones—between those who (like Tyler) claim their position "by the Constitution, by election, and by act of God"[2] and those who (like Washington) must omit the Divine sanction? Shall we match Tyler with Taylor, Theodore Roosevelt with Franklin Roosevelt, Truman with Lincoln, Polk, or Buchanan? We could come to no conclusion if we did, for the problem is not one of personalities but of principles. Its solution is implicit in its statement. John Quincy Adams was not asking a question; he was pointing a finger. If we admit that the Constitution, on the death of the chief executive magistrate, brings into the presidency a person not contemplated by the people for that office, then we have our answer: the Constitution is defective in so far as it recognizes the possibility that the presidency can be filled otherwise than by an election of the people.

But must we make the admission? John Randolph of Roanoke, though acknowledging in 1803 that the office of vice president was unnecessary and ought to be abolished, thought not: the electors give their votes under the knowledge that in certain contingencies the person whom they select for vice president will be the president; how then can it be pretended that the man not intended to be president may succeed to that office, when it is explicitly understood that he may, and will, succeed to it under certain contingencies?[3] Randolph was joined by others. It was being argued—for reasons which I shall notice later—that the Twelfth Amendment, if adopted, would destroy the personal consequence and the worth of the vice president. But Senator Clinton objected: "Can the gentleman suppose that the Electors will not vote for a man of respectability for Vice President?"[4] Senator Maclay thought "the Electors

[2] See the remarks of Representative Wise, *Congressional Globe*, 27th Cong., 1st Sess., p. 4.

[3] 13 *Annals of Congress*, 695.

[4] 13 *Annals*, 22. Clinton, however, was "*rather* in favor of the *principle*" of abolishing the vice presidency. William Plumer, *Memorandum of Proceedings in the United States, 1803-1807* (New York, 1923), p. 19.

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will, after this amendment, pay as much attention to select a respectable man for the office of Vice President as they have heretofore done." [5] Senator Jackson spurned "the insinuations of those who would suggest that we shall not choose a man of integrity for the office of Vice President. The people, sir, will solicit a man worthy of their confidence, and honored abroad and at home." [6]

The issue is clear. In order to resolve it let us begin by examining the fundamental difficulty of the vice presidency: the enormous disparity between the importance of the office and the importance of the officer.

2

The first thing to observe about the office is that it has no duties. True, the vice president is President of the Senate and, as such, performs duties analogous to those of the Speaker of the House. But the two offices are separate and distinct. "I am possessed", said John Adams, "of two powers; the one in *esse* and the other in *posse*. I am Vice President. In this I am nothing, but I may be everything. But I am President also of the Senate." [7] The combination of offices has excited surprise. Roger Sherman explained it in the Federal Convention: "If the Vice President were not to be President of the Senate, he would be without employment." [8]

Now an office without duties, no matter how great its reversionary prospects, is not an office to inspire or satisfy the expectations of an ambitious mind. John Adams declared the vice presidency the most insignificant office that ever the invention of man contrived or his imagination conceived—almost the only one in the world in which patience and firmness are useless.[9]

[5] Plumer, *op. cit.*, p. 21. Maclay was by no means sure that he was right: "He thought that a suggestion that an improper person would be chosen Vice President was premature: it could not be known till tried." 13 *Annals*, 23.

[6] 13 *Annals*, 159.

[7] *Journal of William Maclay* (New York, 1890), p. 3.

[8] Max Farrand, *Records of the Federal Convention* (New Haven, 1937), II, 537 (Madison's notes).

[9] *Letters of John Adams to His Wife* (Boston, 1841), II, 133. John Adams, *Works* (Boston, 1850-56), IX, 573.

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Jefferson found it the only one in the world about which he was unable to decide whether he would rather have it or not have it —honorable and easy, it would give him philosophical evenings in the winter and rural days in summer. But was that enough? [10] Burr would gladly have resigned it had Jefferson been willing to employ him "in any active station." [11] The catalogue could be continued—through those who have declined the nomination when it was made to them and those who have refused to allow their names even to be placed in nomination. It is somewhat remarkable that in 1900 Boss Quay and Boss Platt thought that by forcing the nomination on Theodore Roosevelt, they might destroy him forever as a political character.

Still, if the office is unimportant, the officer is not. As Senator White pointed out in continuation of the remarks which I have quoted at the head of this article, "The Vice President is not only the second officer of Government in point of rank, but of importance, and should be a man possessing, and worthy of the confidence of the nation." [12] Why? Because, to repeat the remark of our first vice president, he *is* nothing but he *may be* everything. If the president dies, or resigns, or is removed from office, the vice president becomes president.[13] And it is particularly to be noted that he succeeds for the remainder of the term which may be the full four years if the president should die after election but before inauguration. Timothy Pickering pointed to the limiting case 129 years before the Twentieth Amendment took superfluous cognizance of it.[14]

Here then is the problem: how to fill an office which no one

[10] See Jefferson's letters to Madison, Rush, and Gerry. Thomas Jefferson, *Works*, Ford ed. (New York, 1804), VIII, 262, 278, 284.

[11] Burr to Jefferson, Dec. 23, 1800; quoted from Nathan Schachner, *Aaron Burr* (New York, 1937), p. 191.

[12] 13 *Annals*, 143.

[13] In the First Congress, Representative Boudinot, debating the question of compensation, took the same view: "The constitution considers him a respectable officer, he is to supersede the president, when it shall happen that the first magistrate is removed on impeachment and conviction. These are the great objects of his appointment. His duty as president of the senate is only collateral; consequently he ought to be respected, and provided for according to the dignity and importance of his principal character." Thomas Lloyd, *Congressional Register*, II, 93.

[14] 13 *Annals*, 198.

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but a Throttlebottom can want, with a man of the highest respectability, well known, and of established reputation throughout the United States? If the problem can be solved, well and good; if not, let us bid adieu to our vice presidents and make provision, as the Founding Fathers at first intended to make provision, for the temporary filling of the office of president in the event of a vacancy and for the prompt holding of a new election.

3

The men who framed our Constitution thought that they had solved this problem. If the man could not be brought to the office, then the office would be imposed upon the man. They sought to accomplish this object through a most ingenious mode of election—long since abandoned and nowadays scarcely understood, even by professors of government. Let us pause to examine it.

Under the Constitution as it stood from 1788 until 1804, the presidential electors met, as they do now, in each state of the Union, on the same day, for the purpose of choosing a president. They were not allowed to choose a vice president. They had nothing to do with that officer, who, so far as they were concerned, might as well not have existed. They were confined, as Senator Tracy remarked, " to act with a single reference to the character and office of President, and were trusted with no power to give any opinion of the character or qualifications of a Vice President." [15] Hence it is that the original Constitution never notices an electoral vote for vice president and contains no qualifications for the vice president as such. The vice president was voted for as president and the qualifications requisite of age, citizenship and residence were as president.[16]

In choosing a president each elector had two votes—not one, as now. He wrote the names of two persons, both qualified to be president, on a piece of paper called a ballot, and put it in a box. He was not allowed to distinguish between them; he could not say, I want A for president and B for vice president, or I want A for president, but in a pinch I'll take B. So far as the

[15] 13 *Annals*, 170.

[16] Tracy noted the fact; 13 *Annals*, 170. So did Plumer, *op. cit.*, p. 60.

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Constitution was concerned he had cast two undiscriminating votes for president. Both of them would be counted. Either might make a president, but the elector could not know which.

The next step was to make a list of all the persons voted for as president and of the number of votes for each. This done, the lists were sealed up and sent to the seat of government, there to be opened by the President of the Senate in the presence of the two Houses of Congress.

Once opened, the votes were counted. If it was found that a majority of the electors appointed had concentrated their suffrages on a single man, giving him more votes than anybody else, that man was declared president. If the majority had given an *equal* vote for two—or three—persons, the House of Representatives, voting by states and not by heads, immediately decided between them. If no candidate were the choice of a majority, the House of Representatives, voting by states, chose a president from the five highest on the list.

It was not until the president was chosen that the vice president came into view. And then he was noticed only to be announced. The Constitution provided that, "In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President." Only if there should remain two or more who had equal votes was the Senate to choose from them by ballot the vice president.

That is the key to the original plan. There were to be no candidates for vice president and no contest for that office. Each political party was to put up two candidates for president and none for vice president. The runner-up in the presidential election was automatically to become vice president. Senator Tracy explained the system in a word: "[The second person] . . . can have no existence until the first character is designated, and then seems to be discovered, not elected." [17]

The guiding principle of the system is plain. Two men, both worthy to be president, both possessed of the highest confidence of the people, were to be placed in condition to act as president in succession. Then if the president died, not only would the evils of vacancy be prevented, but a recurrence of choice more

[17] 13 *Annals*, 170.

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frequently than once in four years would be avoided. The whole problem of the presidential succession seemed solved by a mode of selection designed, not to secure a competent President of the Senate, but (in Boudinot's phrase) "to obtain the second best character in the union to fill the place of the first, in case it should be vacated by any unforeseen accident." [18]

On paper the plan seemed perfect. If it had worked—if each elector, laying aside all attempts to give one of his two candidates for president an advantage over the other, had voted for two men, each possessing the qualifications requisite for that high office—it would then have been a matter of much indifference, as it respected the great interests of the nation, which became the president and which the vice president.[19] By putting it in the power of the minority electors to choose which of the two majority candidates for president they preferred, the mode of election might even have been the means of checking and moderating the rage and violence of party spirit, and of controlling and putting down faction.[20]

But the plan of the Founding Fathers failed. The difficulty was that the political parties did not in fact nominate two equal men for president. They put up one man for president and the other for vice president. And the second man was of less ability than the first. Consider, for example, the election of 1800. The Republicans put up two men—Jefferson and Burr—and gave them equal votes in the electoral colleges. Presumably, therefore, they would have been satisfied to see either of them put at the head of the government. But this was not the case. When the House of Representatives was called upon to break the tie, the Federalists exhibited a marked preference for Burr. And what happened? Did the Republicans permit Burr—their own candidate for president—to become president? They did not. They fulminated, stormed, and threatened civil war if the will of the people were thus to be defeated.[21] And

[18] Thomas Lloyd, *Congressional Register*, II, 93.

[19] 13 *Annals*, 198.

[20] 13 *Annals*, 536.

[21] In 1803 Senator Jackson reminded his auditors (Burr not among them) of the fact: "We are told that the candidates, on a former occasion, had an equal claim and equal pretensions to the office of President. He did not wish to make comparisons; but he could not but recollect that the attempt to supersede one of the

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the will of the people *would* have been defeated had Burr been chosen; for not one single elector of either party had given him a bona fide vote as president. He had been put on the ticket "out of respect for the favor he had obtained with the republican party by his extraordinary exertions and successes in the New York election in [April] 1800." [22] But no one thought of him for the office of president. Jefferson had long distrusted him, and had habitually cautioned Madison against trusting him too much.[23] Monroe thought him an unfit character.[24] These were Virginians. But, even in Burr's own state, Hamilton "could scarcely name a discreet man of either party" who did not think "Mr. Burr the most unfit man in the United States for the office of President." [25] Sedgwick remarked: "It is very evident that the Jacobins dislike Mr. Burr as President —that they dread his appointment more than even that of General Pinckney." [26]

Or take the election of 1796. The Federalist candidates were Adams and Thomas Pinckney—both nominally candidates for the presidency. But Pinckney was not in reality the Federalists' second choice for president; if Adams had been dead, or had refused to run, they would not have tried to make Pinckney president. They thought of him as an honest man, who could

candidates, and to place the other in his station, had endangered the Government; and . . . he believed it would not be questioned that, so far as concerned Georgia, it never was intended to give them an equal chance; and small and obscure as that little corner called Georgia is, had the measure been pursued to consummation, which had been attempted on that occasion, she would have flown to arms, and South Carolina would have joined her to do justice to the interest of the nation." 13 *Annals*, 158. Jackson had been Governor of Georgia at the time.

[22] Jefferson, *Works*, I, 381. On the selection of Burr see Henry Adams, *Life of Albert Gallatin* (Philadelphia, 1880), pp. 232-243.

[23] Jefferson, *Works*, I, 381.

[24] Monroe to Madison, Oct. 9, 1792; James Monroe, *Works* (New York, 1898), I, 242-244.

[25] Hamilton to Bayard, Dec. 27, 1800. Alexander Hamilton, *Works* (New York, 1851), VI, 500-501.

[26] Sedgwick to Hamilton, Jan. 10, 1801; Hamilton, *Works*, VI, 513. In 1796 Oliver Wolcott, Jr., reported a similar fact to his father: "The antis, however, do not expect that Col. Burr will succeed, and they secretly wish that Mr. Adams may be elected to his present station." George Gibbs, *Administrations of Washington and John Adams* (New York, 1846), I, 387.

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not be made the tool or dupe of faction,[27] and who might make an interest for Adams, or even a diversion, in the state of South Carolina.[28] But on the other hand they looked upon him as half a democrat; his particular acquaintances were people of whose political opinions they did not approve; [29] it was disagreeable to think of elevating a person to the chief magistracy who had recently been hacknied and vulgarized as Mr. Pinckney must have been in Europe; [30] the election of Mr. Pinckney would be a partial triumph of the French and their traitorous American partisans.[31] According to Chauncey Goodrich:

> The experiment would be hazardous to place the Executive in a character little known in New England, and without any pre-eminent feature of public character, in any part of the Union. More than hundreds, on the score of merit, have a preferable claim to Mr. Pinckney. I do not mean to depreciate his worth. I value it.[32]

Adams himself would rather have been beaten by Jefferson, his opponent, than by Pinckney, his alternate. So at least he said, shortly after his election:

> It is a delicate thing for me to speak of the late election. To myself, personally, " my election " might be a matter of indifference or rather of aversion. Had Mr. Jay, or some others, been in question, it might have less mortified my vanity, and infinitely less alarmed my apprehension for the public. But to see such a character as Jefferson, and much more such an unknown being as Pinckney, brought over my head, and trampling on the bellies of hundreds of other men infinitely his superiors in talents, services, and reputation, filled me with apprehensions for the safety of us all. It demonstrated to me that, if the project succeeded, our Constitution could not have lasted four years. . . . That must be a sordid people, indeed, a people destitute of a sense of honor,

[27] Oliver Wolcott, Jr., to Oliver Wolcott, Sr., Nov. 19, 1796. Gibbs, *op. cit.*, I, 397.

[28] Jonathan Dayton to Oliver Wolcott, Jr., Sept. 15, 1796, *ibid.*, I, 383.

[29] Wolcott, Sr., to Wolcott, Jr., Dec. 12, 1796, *ibid.*, I, 408.

[30] Wolcott, Jr., to Wolcott, Sr., Nov. 27, 1796, *ibid.*, I, 402.

[31] Wolcott, Sr., to Wolcott, Jr., Dec. 12, 1796, *ibid.*, I, 409.

[32] Chauncey Goodrich to Oliver Wolcott, Sr., Dec. 17, 1796, *ibid.*, I, 412.

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> equity, and character, that could submit to be governed, and see hundreds of its most meritorious public men governed, by a Pinckney, under an elective government. . . . I mean by this no disrespect to Mr. Pinckney. I believe him to be a worthy man. I speak only by comparison with others.[33]

The introduction of the designating principle into the system of electing a president and vice president made that system unworkable; for it confronted the presidential electors, especially of the majority party, with an insoluble problem. They had to dispose of their votes in such a way as not only to bring in their two candidates but to bring them in in the right order.

They could do one of three things. They could give their two candidates an equal or nearly equal vote: that would exclude the minority candidates from either office; but then the minority electors, by voting for the person intended by the majority to be vice president and not voting for the person intended by them to be president, might contravene the intention of the majority and place in the executive chair a person not designed by the majority, or one of them, for that office. In 1800 the Republicans adopted this course with almost disastrous results. Nor did it escape their notice that, had a single Federalist elector voted for Burr, Burr would automatically have become president and Jefferson vice president.[34]

Second, the majority could give one of the two votes to which they were entitled exclusively to one candidate and throw away the other: that would secure the office of president to the individual whom they preferred; but it would give up the office of vice president to the minority. In 1796 the Republican party cast a unanimous vote for Jefferson and scuttled Burr. Had they won the election, Jefferson would have been president and Adams vice president.

Finally, the majority could support both their candidates, but unequally, giving the second a few less votes than the first: that

[33] John Adams to Henry Knox, March 30, 1797, *Works*, VIII, 535.

[34] 13 *Annals*, 171. That the Federalists considered voting for Burr is certain: "The question has been asked, whether, if the Federalists cannot carry their first points, they would not do well to turn the election from Jefferson to Burr." Cabot to Hamilton, August 10, 1800; H. C. Lodge, *Life and Letters of George Cabot* (Boston, 1877), p. 284.

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would entail a double risk; for one thing, it would give the minority a greater chance of bringing in their own candidate, at least as vice president; alternatively, it would enable the minority, by switching their second votes from their own vice presidential candidate to that of the majority, to repair any deficiency in that individual's vote and, indeed, to make him president. In 1796 the Federalists pursued this middle course. Anticipating that Pinckney might defeat Adams with the aid of southern votes, they deprived him of eighteen votes in New England alone and two in Maryland; accordingly, Jefferson, the presidential candidate of the Republicans, became vice president in a Federalist administration. If the Federalists had carried Pennsylvania, the story would have been different; in that event "the southern faction would unanimously have voted for Pinckney" [35] and so made him president, with Adams vice president—unless indeed the Federalists had abandoned Pinckney altogether.

These difficulties, made even worse by the machinations of intraparty factions, turned the minds of men to a reform of the electoral system. The Federalists were first in the field with a specific proposal. On January 7, 1797, William Smith of South Carolina remarked in the House of Representatives that great inconveniences might arise from the existing mode of election; gentlemen must be satisfied that it could not answer the end intended, namely, to carry into effect the real intention of the electors. He proposed, therefore, that the electors be directed by the Constitution to designate whom they meant to be president and whom vice president.[36] A year later John Marshall of Kentucky proposed a similar amendment in the Senate, but made no attempt to explain or press it.[37] Presently George Cabot complained of the Federalist apathy with regard to the subject of electing the president and vice president:

> The defect of the constitution in this particular is so obvious, and the inconvenience and absurdity of it so much felt, that I should imagine a proposition to amend it could not fail of success. It is certain that in the late election we were in danger of

[35] Goodrich to Oliver Wolcott, Sr., Dec. 17, 1796; Gibbs, *op. cit.*, I, 413.

[36] 6 *Annals*, 1824. [37] 7 *Annals*, 493; Jefferson, *Works*, VIII, 360, 361.

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> seeing a French President instead of an American placed in the chair, when a majority of the electors were truly Americans, merely because each elector could not constitutionally determine the character of his own vote. If this article in the Constitution is not amended, we shall be exposed to great embarrassments at the next election, as we were at the last. . . .[38]

After the election of 1800 the reform movement was taken up by the Republicans. Attempts were made in 1801 and in 1802 to pass a designating amendment, but these were successfully repelled by the Federalists to whom the defect of the Constitution had ceased to be obvious and who no longer felt its inconvenience and absurdity. The reasons for this Federalist change of opinion were clearly explained by Cabot:

> I confess I was once desirous of a change of the kind now contemplated, believing it an indispensable means of preserving the government in good hands, and the country from the fangs of France, but we failed. Our opponents now wish the same things for purposes they approve, but which we think dishonorable and ruinous. Shall we be so weak as to promote in this manner the views and perpetuate the power of those in whom we cannot confide? [39]

In 1803, however, the Federalist opposition was overcome in both Houses of Congress, and a designating amendment was proposed to the states. In the summer of 1804 ratification was completed—in plenty of time to take care of the fall elections.

The Twelfth Amendment completely altered the original mode of electing the president and vice president. It was no longer to be " the great and solemn duty of Electors, upon all occasions, to give their votes for two men who shall be best qualified for the office of President . . . two men, in either of whom they are willing to confide the Executive power of the Government." [40] Henceforth they were to vote for one man as president and another man as vice president, indicating their choices in distinct ballots. When the votes were counted the man having the greatest number of votes for president was to

[38] Cabot to Pickering, Dec. 14, 1798, Lodge, *op. cit.*, p. 189.

[39] Cabot to Pickering, Jan. 10, 1804, *ibid.*, p. 336.

[40] 13 *Annals*, 752 (Roger Griswold).

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be president and the man having the greatest number of votes for vice president was to be vice president—provided that, in each case, the greatest number equaled a majority of the whole number of electors appointed. If no candidate for president had a majority, the House of Representatives, voting by states, was to choose a president from the persons having the three highest numbers on the list. If no candidate for vice president had a majority, the Senate, voting by heads, was to choose a vice president from the persons having the two highest numbers on the list.[41] The same qualifications were required of the vice president as of the president—a necessary precaution since he was no longer to be voted for as president. And it was provided that "if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following [the date of the president's taking office], then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President."

The requirement of a majority for the vice president was a novelty introduced to meet the objections of those who feared that, under the new arrangements, a very inferior candidate might be chosen.

3

How the Twelfth Amendment has worked out in the case of the presidency—whether it "invites ambition to an unchecked operation" and "exposes as to the selection of a less important and more unfit person" than the provision of the original Constitution[42]—we need not pause to inquire. But this much is certain. It has completely frustrated the object of the Founding Fathers in requiring the vice president to be voted for as president. That object was to secure a second person in the far inferior place, who might be depended upon, in case of necessity, suitably to fill the first.[43] By directing the vice president

[41] This rather clumsy language was intended to care for every conceivable distribution of the votes—the case, for example, where one man had the greatest number (but not a majority) and two or more were tied for second place.

[42] 13 *Annals*, 173. See also 13 *Annals*, 144, 732, 749; 17 *Annals*, 340.

[43] C. F. Adams, *Life of John Adams*, p. 443.

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to be voted for as such, the Twelfth Amendment reduced that officer to what used to be called "a secondary character"—a character of the second order of ability and reputation—and made it altogether too likely that he will be a man who "will want some of the qualities necessary to command the respect of the nation, and possibly be marked by some of an opposite tendency." [44]

The reason is obvious. It was pointed out as early as 1803 by Senator Plumer:

> The Vice President . . . will no longer be voted for as President of the United States, but as President of the Senate—he will be elected *to preside over forms in this House.* He will have less dignity, and be less respectable—this will be the unavoidable consequence of the change. In electing a *subordinate officer,* men do not, they will not, seek for, or require, those qualifications which they deem requisite for *supreme* command.[45]

We need not labor the point. Everyone knows that a vice president selected under the designating principle is not chosen in contemplation of his succession to the presidency, but for the more immediate purpose of party advantage. Everyone has always known it. The members of the Federal Convention conceived that if, in elections, the president and vice president were distinctly designated, "the Vice Presidency would be but as a bait to catch state gudgeons." [46]

In the debates on the Twelfth Amendment the same idea was frequently brought forward. The vice presidency would be hawked about at market and given in exchange for votes for the presidency. The only criterion which would be regarded as a qualification for the office would be the temporary influence of the candidate over the electors of his state. A large state, having numerous electors and claiming the right to designate the president but not having votes enough of itself for the purpose, would carry the office of vice president to another state and would say, "Give us the president and we will give you the

[44] James Madison, *Writings* (New York, 1910), IX, 367-368.

[45] Plumer, *Memorandum,* p. 64.

[46] Gouverneur Morris to the President of the New York Senate, Dec. 25, 1802, Farrand's *Records,* III, 394.

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vice president." The candidate for president, his friends and favorites would never promote the election to the vice presidency of a man of talents, probity, and national popularity, who might prove a rival. Instead they would seek a man of moderate talents, fit perhaps to preside with credit in the Senate, but whose ambitions were bounded by that office and whose influence would aid them in electing the president. Most pointed of all were the observations of Senator White:

> Character, talents, virtue, and merits will not be sought after in the candidate. The question will not be asked, is he capable? is he honest? But can he by his name, by his connections, by his wealth, by his local situation, by his influence, or his intrigues, best promote the election of a President?

Today we know that all these predictions have come true. The electors—or, to speak more correctly, the delegates to the party conventions—calculating on the durability of human life, are, in their choice of vice president, influenced by considerations by which they ought not to be governed. One man is chosen to strengthen the ticket in a doubtful state (say, Hendricks in 1884); another to placate a minority which has been unsuccessful in the party convention (Arthur in 1880); a third to represent some "element" in the population—for example, the loyal man in the border states (Johnson in 1864). I take my instances from the nineteenth century; they might readily be brought up to date.

Viewed in this light, it is apparent that the Twelfth Amendment has defeated its own design. Its declared object was to prevent a man not intended to be president from being president. Well and good. But when the president dies, the man whom it was intended to be defeated is promoted; the man whom the people never intended should be president, who received not one vote for that office, the vice president, becomes president.

4

What is to be done about "that provision of the Constitution which places in the Executive chair a man never thought of for that office by anybody"? It is idle to talk of restoring the

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original mode of election—the mode that failed. An election which may, from the mode of holding it, terminate in the appointment of a different person than the one originally intended for it by a majority of the electors has not much to commend it. As one of our early Congressmen remarked: "When one person is intended for an office and another person actually obtains it, such election, if indeed it can properly be called an election, is not conformable to the will of those by whom it was made." [47]

But some other solutions have been proposed. Many men, for example, have suggested that the powers of the vice presidency should be enlarged. Their argument runs something like this: If the vice president is a secondary character, that is because no one but a secondary character wants to be "a Queen Bee kept in reserve" [48]—"an heir apparent calling for the morning papers at every sunrise to find whether the events of the night have raised him to the throne, and with nothing to do meanwhile except to let this corrugating thought dwarf and malform his soul." [49] But give the vice president something to do, make him an important officer in his own right, and then persons of the first rank will seek the office and the party politicians will be ashamed or afraid not to nominate them.

One trouble with all proposals of this type is that they lack precision. Work is to be given to the vice president; but exactly what work? The suggestions are tentative and vague. It is difficult to talk about them very concretely. Nevertheless we may hazard some observations.

The powers of the vice presidency can be enlarged either in the legislative or in the executive sphere. In 1909, for example, Senator Beveridge thought that the vice president might

[47] 13 *Annals*, 491 (John Clopton of Virginia). If the 1952 elections had been conducted on the original plan, it is impossible to say how they would have come out. If the Republicans had given 432 votes to Eisenhower, 431 to Nixon, and thrown one away, the Democrats by switching 2 votes from Sparkman to Nixon could have made Nixon president. To be mathematically safe, a majority party must appoint more than two thirds of the electors and must then throw away from its second candidate more votes than the total number of minority electors.

[48] F. S. Oliver, *Alexander Hamilton* (New York, 1907), p. 406.

[49] A. J. Beveridge, "The Fifth Wheel in Our Government", *Century Magazine*, vol. 79, p. 212 (Dec. 1909).

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be given the appointment of the Senate committees; such a power would make him the equal or indeed the superior of the Speaker of the House of Representatives; the vice presidency would become an object of ambition; at the same time the party convention—recognizing the new importance of the office and acting under the compulsion of the people themselves—would nominate a competent man and, what is even more important, would see to it that he represented the views of the party majority quite as much as the nominee for president himself.[50]

The idea might be extended or modified in various directions. But it contains, I think, a fatal flaw. It is hard enough that the Senate is not now allowed to choose its presiding officer. If a president were thrust upon it with the power of a "Czar" Reed, the arrangement might work well enough as long as he and the Senate were of the same political complexion. But what would happen if the vice president were of one party and the majority of the Senate of another?

Would it be better then to enlarge the vice president's executive powers—which are now *nil*? Several suggestions have been made to this end. In 1916, for example, Representative Hayes, taking a hint from Senator Beveridge and Theodore Roosevelt, offered a constitutional amendment to make the vice president a member of the Cabinet without portfolio.[51] In 1946 Representative Monroney talked of an amendment to make him a sort of executive assistant to the president.[52] Only recently it has been suggested that the vice president should be ex officio a member of the United States delegation to the United Nations—or, alternatively, the chairman of the National Security Council.[53]

These suggestions, too, are very specious, but, like those for

[50] *Ibid.*, pp. 213-214.

[51] M. A. Musmanno, *Proposed Amendments to the Constitution*, 70th Cong., 2d Sess., H. Doc. 551, p. 81. Beveridge, *loc. cit.*, p. 214. *Works of Theodore Roosevelt* (New York, 1926), XIII, 143. Roosevelt's suggestion was made in 1896; it was noticed that when he became president he gave his vice president, Charles W. Fairbanks, precisely nothing to do; *The Nation*, vol. 81, p. 32 (July 13, 1905).

[52] *Cleveland Plain Dealer*, Nov. 7, 1946; *New York Herald Tribune*, Jan. 19, 21, 1947; 93 *Congressional Record*, App. 364.

[53] Monroe E. Deutsch, "Veeps Can Become Presidents", *The Nation*, vol. 175, p. 580 (Dec. 20, 1952).

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enlarging the legislative powers of the vice presidency, they are open to serious objection. The whole idea of vesting in the office of vice president any substantial part of the executive power is inconsistent with that clause of the Constitution which vests the executive power of the United States in a single person, the president, and with that other clause which makes the president responsible by requiring him to take care that the laws be faithfully executed. How is the president to be held responsible for the entire execution of the laws, if some of the laws are to be executed by an officer not subject to his direction or control? It must be remembered that a vice president, armed with substantial powers and irremovable except by impeachment, might use his position to embarrass and defeat, as well as to aid, the administration.

Some suggestions have been put forward along a totally different line. Judge Fasso of New Rochelle, for example, has recommended that the candidates for president and vice president in the party convention should pair themselves off in teams of two and that the convention should then vote for them as teams and not separately.[54] But how the pairings would be made, and how a leading statesman could be persuaded to take the second place on someone else's ticket instead of the first place on his own, are not very apparent.

Dr. Monroe E. Deutsch, on the other hand, contends that the whole difficulty would be solved if the vice president were elected separately from the president.[55] He means, of course, in the popular election, for in the electoral colleges the two officers are in fact chosen separately. It will be remembered that, when we went to the polls last November, we had our choice of teams. We could vote, in effect, for Eisenhower and Nixon or for Stevenson and Sparkman; we could *not* vote for Eisenhower and Sparkman or for Stevenson and Nixon. Dr. Deutsch thinks that by separating the election for the two offices—and so requiring the secondary candidate to stand on his own feet and be judged on his own qualifications—we would be compelling the party conventions to nominate better men.

[54] Letter to the *New York Herald Tribune*, published Dec. 17, 1952.

[55] Deutsch, *loc. cit.*, p. 580.

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I cannot think so. The contest between the parties would still be for the great prize, and the qualifications for the secondary candidates would still be what they are now—vote-getting ability and nothing else. Dr. Deutsch's remedy would, in my opinion, only make our troubles worse. For it might sometimes bring into office a president of one party and a vice president of the other—one of the very evils which the Twelfth Amendment was designed to prevent. Then if the president died, we would not only have as president a man never thought of for the office by anybody but we would certainly have what Senator Beveridge used to call a "political non-sequitur" in the executive branch—a sudden change in the direction of the administration. Does anyone really think that the substitution of Senator Sparkman for Senator Nixon as provisional successor to President Eisenhower would remove the difficulty of the succession problem?

5

The objections which lie against every proposed solution to the problem of the vice presidency are such as to suggest that very possibly the problem of the vice presidency cannot be solved. Just as no one can devise a method for squaring the circle with compass and straightedge alone, so perhaps no one can devise a method for filling a tenth-class office with a first-class man.

It is possible, however, greatly to reduce the risks which are created by the mere existence of a vice president. If it could be provided by statute that, when there is a vacancy in the office of president, the vice president succeeds only until such time as a new election can take place, most of the risks would disappear.

Some proposals have recently been made to this end. Just before the elections of 1952 Walter Lippmann, in his syndicated column, argued cogently that, if the president should die prior to the mid-term elections, a new president should be chosen, for a new four-year term, at those elections; if the president should die in the second half of his term, the election would be as it is now.[56] A few weeks later, Senators Fulbright and Smathers,

[56] *New York Herald Tribune*, Oct. 20, 1952, p. 17.

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independently of each other, recommended a similar scheme.[57] Senator Smathers has now incorporated his plan in a joint resolution to amend the Constitution generally with respect to the election of a president and vice president.[58] As he explained the matter to the Senate, ". . . when a President dies, or otherwise becomes incapacitated to serve as President [during the first half of his term], the Vice President [is to] succeed to the Presidency but [is to] hold that office only until the next general election, providing the next general election is more than 90 days away." [59]

The idea of this plan is to reduce to the shortest practicable time the period during which a vice president may exercise the office of president. The reasons for waiting until a general election to choose a new president are obvious. An extraordinary election might destroy the periodicity and synchronism of the government—by which is meant the regular return of elections at which the president is chosen along with the whole of the House of Representatives and a third of the Senate. The Constitution requires the president to be elected for four years, so that if the timing were once upset it could not easily be restored. A mid-term election would retain the synchronism, for the whole of the House and a third of the Senate change every two years, not every four. Whether it be necessary to allow 90 days for the making of nominations and the choosing of electors may be doubted. In 1791, when communications were poorer than they are now, the Senate considered 30 days sufficient for this purpose;[60] the Act of March 1, 1792, providing for an extraordinary election in case of vacancies in the office of both president and vice president, allowed only two months.[61]

The idea of holding an election for president more than once in four years is not so novel as it may appear. It is contemplated by the Constitution for the case in which both the offices of president and vice president become vacant; and there can be no doubt that, if the office of vice president had not been

[57] *New York Times*, Dec. 9, 1952, p. 69.

[58] 83d Cong., 1st Sess., S. J. Res. 8.

[59] *Congressional Record*, Jan. 7, 1953.

[60] 3 *Annals*, 278.

[61] 1 Stat. 240.

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invented, it would have been contemplated for the first succession also. The vice president succeeds for the remainder of the president's term only because, in the original mode of appointing him, he was expected to be the man in whom the nation reposed its second confidence; in his case a new election could not be necessary.

To the members of the First and Second Congresses the idea was equally familiar. When the bill declaring the officer who in case of a double vacancy in the executive office should act as president was being debated, it was pointed out that there was a previous question necessary to be determined, and that was whether the person appointed to supply the vacancy should hold office during the time for which the president and vice president had been elected or only until a new election could take place. By the Act of March 1, 1792, it was decided in favor of the shorter as against the longer time. This act remained on the statute books until 1886.

It is not generally known that up until 1947 the law contemplated at least the possibility of holding a special election. True, the Act of 1886 [62] specifically repealed the special election provided by the Act of 1792 and, as originally drafted, authorized the Secretary of State to act as president for the unexpired portion of the four-year term. But the bill was violently opposed on its passage: its language was changed so that the acting president was to exercise the office only "until the disability be removed or a President shall be elected"—the exact language of the Constitution which, as we know from Madison, is intended to permit "a supply of the vacancy by an intermediate election of the President"; and an amendment was made requiring the acting president to call Congress together in special session within twenty days of his succession. In the debates it was made perfectly clear that the object of these changes was to leave it to Congress whether or not to order a special election as the circumstances might suggest.

It was not until 1947 that the Congress, in a very ill-advised statute, provided that, in the event of a double vacancy, the acting president should "continue to act until the expiration of the then current Presidential term." [63]

[62] 24 Stat. 1. [63] 61 Stat. 380.

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We can say, therefore, that the idea of choosing a new president as soon as may be practicable after the old one dies is good in itself and is perfectly consistent with the spirit of the Constitution. But is it consistent with the letter of that instrument? The question is sure to be raised, and may as well be examined here.

The vice president, it might be argued, is elected under the Constitution for a four-year term; consequently he cannot be reduced to the rank of a private citizen before the expiration of that term; if a new president were to take office during the course of the vice president's term, that fact would not oust the vice president from the government; he would cease to exercise the office of president but would remain in the office of vice president. That is one thing. But the Constitution also provides that when a president is chosen a vice president must be chosen also. If then a new president were to be chosen at the mid-term elections, a new vice president would have to be chosen also. And what then would be the situation of the country? For two years we might have two vice presidents, perhaps of different parties and with no way of distinguishing between them as to precedence.

The argument is ingenious. It can be answered only by denying one of the premises. The second is unassailable. But what about the first? Does the Constitution grant the vice president a four-year term? The language of that instrument is ambiguous; it says only that the president " shall hold his Office during the term of four Years, and, together with the Vice President, chosen for the same Term, be elected as follows ". Does the expression " for the same Term " signify " for four years " or " for a term coincidental with that of the president " ? If we construe the clause in this second sense, we can argue that the term of the president, and therefore of the vice president, ends with the death of the former, and that the latter then becomes a mere regent keeping the wheels of government in motion only until a new president and vice president are elected.

It may be hard on a vice president thus to oust him just as he has fulfilled the purpose of his creation. But on the other

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hand there is nothing to prevent his standing for reëlection. If he cannot be reëlected either as president or vice president, it is perhaps just as well that he should become once more a private citizen.

6

In my view, however, the simplest expedient of all, and the one most in harmony with the principles of the Constitution, would be to abolish the office of vice president—wipe it clean out of the Constitution; provide by law—no further constitutional amendment would be needed—for a mid-term election in the event of the president's death, resignation, removal, or permanent disability during the first half of his term; and let Congress declare—as it now declares in providing for the case of a double vacancy—what officer shall act as president until a president be elected or, if the President's disability be merely temporary, until the disability be removed.

The arguments for abolishing the vice presidency have in the main been given. But let me resume them here. To begin with it is an unnecessary office. The vice president, as such, has no duties. He is not needed as President of the Senate, for in any case the Senate would have a presiding officer—just as it now has a president pro tempore when the vice president is absent or is exercising the office of the president of the United States. The Senate itself derives no particular advantage from having its president, in a manner, thrust upon it; it was noticed at a very early period that, although the Senate sat half its time without the vice president, its business was as well done without as with him.[64] The office was introduced, so we are told, only for the sake of a valuable mode of election which required two to be voted on for president at the same time;[65] that mode has now been abandoned; perhaps even under it the office was not wanted—a double voting system does not require a prize for the runner-up. Even as an heir apparent a vice president is unnecessary; Congress, acting under the Constitution, has provided by law for a different mode of succession in the event

[64] 13 *Annals*, 674.

[65] Hugh Williamson in the Federal Convention; Farrand, *op. cit.*, II, 537.

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that both the offices of president and vice president become vacant; that mode could be used in the case of a single as well as a double vacancy.

What apology can be made for retaining an office of which no one can demonstrate the utility? Is it, as Representative Taggart suggested in 1803, that the vice president may "take a pleasant journey to the seat of government once a year, meet with and preside in the Senate for a few weeks, possibly not more than three or four in a session, receive $5,000 and go home again?"[66] Modernize the problem: allow him a longer stay in Washington and give him a $30,000 salary, a $10,000 expense allowance, $5,480 for an automobile, and $55,410 for clerk hire. The *douceur*, as another member remarked, may be beneficial to him, but it cannot be useful to his country.[67]

That the office is unnecessary is not however the only or even the principal reason for abolishing it. Its mere existence presents a danger. For the president may die and who will succeed him? Not, as was originally contemplated, the man who was honored by the second largest number of votes of the people for the same office, and who in consequence would probably be worthy of the place and competent to its duties, but a man who, from the nature of the choice, is probably wholly unqualified to fill the office of president and in whom the people of the United States would have no confidence as such. It has been remarked that, as in recruiting for an army, a man, active and of a particular cast of character, but not very proper for a commander-in-chief, is employed to obtain recruits and, upon condition that he obtains a given number, is to be rewarded with a sergeant's warrant, so, in this case, the man who can procure a given number of votes for president will be encouraged to hope for the vice presidency.[68] I do not know that it has ever been suggested that recruiting sergeants be placed next in the line of succession to generals.

It is also worth noticing that the abolition of the vice presidency would automatically remove every difficulty which impedes the proper operation of the government when the president, by reason of sickness or other casual disability, is unable

[66] 13 *Annals*, 733. [67] 13 *Annals*, 674. [68] 13 *Annals*, 173.

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to exercise his office. These difficulties, it should be observed, have arisen from a fanciful construction of the Constitution. It has been contended that a vice president, who acts as president during the illness, absence, or other incapacity of his chief, becomes president in his own right and can never revert to his former station; in other words, he ousts the president. The argument, to be sure, is invalid and makes the Constitution inconsistent with itself in several places—and inconsistent with common sense. But nonsensical theories have been held before now, and this one has had a respectable following since 1841. The cases of Garfield and Wilson have shown that, under the present arrangements, no case of presidential disability will ever be officially recognized; consequently, when the president is in fact disabled, the public affairs cannot be properly conducted. If there were no vice president the case would be different, for the Constitution very clearly states that in such case the provisional president shall act as president only "until the disability be removed or a President shall be elected."

Finally, I would observe that the abolition of the vice presidency would remove every constitutional doubt as to the power of Congress to order a new election whenever the office of president becomes vacant.

* * * * *

I submit, therefore, that, if in the present Congress the subject of amending the Constitution with respect to the election of the president and vice president be taken up, the question might well be raised whether a vice president be wanted at all; whether the reasons for erecting the office were not in fact frustrated by the amendment which the states ratified in 1804; and whether the office might not, therefore, better be abolished.

LUCIUS WILMERDING, JR.

PRINCETON, N. J.

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BACKGROUND FOR THE EUROPEAN DEFENSE COMMUNITY

THE signing in Paris, on May 27, 1952, of the treaty creating the European Defense Community may very well prove the historical watershed of our parlous period. Not since the days of Pope Urban II in 1095 has Europe seen a truly international army. With the advent of the EDC, therefore, new and "significant initials"—to purloin the editorial descriptives of an American daily—have come into being, but whether the EDC ever becomes, in a genuinely constructive sense, the alphabetical combination which spells out a firm security formula for Europe remains locked in mystery.[1] The immediacy and violence of the chain reactions it has sparked in every major world capital are sufficiently indicative of the revolutionary character of this new military-diplomatic creation. Against the inability to frame definitive assessments must be posed the imperative for more detailed and coördinated information concerning the origins and proposed structure of a European army; this exploratory study is obviously intended to achieve the latter objective.

Developments leading to the actual signing of the draft treaty fall into four more or less distinct phases: (1) the projection of the idea for a European army at the Strasbourg Assembly in August of 1950; (2) the official endorsement of the concept by the French government in October of the same year through the Pleven Plan; (3) the completion of the Interim Report in July 1951 by experts from the participating states; and (4) the conference of the Foreign Ministers at Strasbourg in December which effectively hurdled important questions of principle and prepared the way for full acceptance of German participation in the European defenses by the NATO Conference at Lisbon in February 1952.

[1] Said of the draft treaty signed May 9, *New York Herald Tribune*, May 12, 1952.

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I. *European Security in the Post-war Setting*

If a formula of blood and iron made Bismarck the prophet of our gloomy century, the transmutation of that dictum into the purely human terms of "blood, sweat and tears" marks Winston Churchill as the fulfillment of the prophecy. What G. Lowes Dickinson had earlier called the "international anarchy" [2] has run its logical gambit and the bitter fruits implicit in the Churchillian recipe have become the daily bread of mankind the world over. Europe emerged from the last war with three hallmarks which, in the aggregate, were wholly unprecedented in her history: (1) she no longer had a first-class Power; (2) she was cruelly partitioned; (3) and she lived uneasily within boundaries drawn exclusively for military and tactical purposes. Lacking a major Power, Europe found herself perched uneasily between two colossi whose ways of life and whose behavior in international society were viewed traditionally with a certain degree of suspicion. In this new bipolar world only Russia and the United States had the oil, the iron and the manpower with which to build modern fighting machines.[3] In the second place statesmen had to deal with an "iron-curtained" Europe and it was frequently argued that this partitioning had doomed her civilization and vitality beyond recall—that the continent was dead and there was no point in not mercifully interring the corpse. From the immediate view the most important feature of all was the sketching of European frontiers on a purely military atlas. As Dr. Michael Freund, the co-editor of *Gegenwart,* has pointed out,

[2] *The International Anarchy, 1904-1911* (London, 1926).

[3] Instructive data on the material resources of the two Great Powers were given as early as 1946 in the *Minerals Yearbook,* especially pp. 622 *et seq.* On population figures see the prognostications made by Frank Notestein, *The Future Population of Europe and the Soviet Union* (Geneva, 1944), esp. pp. 312 *et seq.*, and the later studies by Dudley Kirk, *Europe's Population in the Interim Years* (Geneva, 1946), and Frank Lorimer, *New Compass of the World* (New York, 1949). Another writer holds that the "age and sex structure of the current [Russian] population points to a forthcoming period when the supply of human effectives will be favorable for Russian aggression." Eugene M. Kulischer, "Russian Manpower", *Foreign Affairs,* vol. 31, p. 67 (October 1952). For a contrary view consult Kathleen Thayer, "The Myth of Eastern Manpower", *The Yale Review,* vol. 40, pp. 614-620 (June 1951).

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> the present condition of the world is not one of peace; it is one that is a direct product of war. It is a state of affairs based simply on the war maps of 1945. The result of the last war was to leave the victorious armies standing where they were at the time of the cease-fire. The Soviet sphere of interest corresponds exactly with the areas that the Red Army over-ran. Never before in modern history has this happened: that the frontiers of peace should be drawn precisely along the lines reached by the conquering armies.[4]

It was on the continent that the armies of the two colossi had their points of immediate physical contact and the necessity for accurate assessment of Soviet designs became paramount. Did Communist ideology imply an inevitable armed clash with the West?[5] Was Colonel G. A. Tokaev, the former Soviet Army officer, to be believed when he warned and titled his recent book *Stalin Means War*?[6] Was Stalin sincere when he spoke of peaceful coexistence between East and West?[7] Or was coexistence a mesmerizing verbalism designed to lull the West into fatal slumber? Finally, would the Western pledge to build its

[4] "The World Order Has Collapsed", in J. G. Smyth (ed.), *The Western Defences* (London, 1951), p. 100.

[5] An affirmative answer to this question is implicit in the work of James Burnham, *The Coming Defeat of Communism* (New York, 1950). *Cf.* Lev E. Dobriansky, "America's East European Policy", *The Ukrainian Quarterly*, vol. 4, pp. 253-262 (Summer 1948). Under Waldemar Gurian's direction the *Review of Politics* has given extensive coverage to questions of Marxist philosophy. One should not neglect Barbara Ward's classic exposition in her *Policy for the West* (New York, 1951) especially chs. 1 and 2, nor Hans Morgenthau's solemn warning not to underestimate Soviet strength, "The Conquest of the United States by Germany", *Bulletin of the Atomic Scientist*, vol. 6, pp. 21-26 (1950). For all facets of Soviet conduct see the series of excellent publications issued by the Russian Institutes of Columbia University (listed in *Reports on Research and Publications*, New York, 1950, 1951) and Harvard University.

[6] *Stalin Means War* (London, 1952).

[7] In statements to members of the Soviet Communist party Stalin had declared that the mere existence of capitalistic Powers should be regarded as a threat against Russia. Quoted from *Bol'shevik*, organ of the Politburo, by *The Times* of London, August 2, 1950. In the same Soviet magazine Molotov in December of 1949, and Mikoyan, in *Pravda*, March 11, 1950, spoke of the inevitability of world conflict. On this specific point see the able summations by Raymond L. Garthoff, "The Concept of the Balance of Power in Soviet Policy", *World Politics*, vol. 4, pp. 85-111, and Peter Meyer, "The Driving Force Behind Soviet Imperialism", *Commentary*, vol. 13, pp. 209-217 (March 1952).

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armed strength arouse the latent "fear complex" of Soviet leaders and "persuade them of the necessity of a desperate gamble for survival"; or was it more probable "that they would seek means of accommodation to permit peaceful coexistence until the inexorable laws of Marxism . . . swing the balance more clearly in their favor"? [8]

Whatever doubts had assailed Western leaders in their estimates of Russian intentions were swept away by Korea which set warning lights pulsating in all Western chancelleries. Korea revealed beyond peradventure that the Soviet Union was the great missionary Power which would continue to "attack all alternatives to their Communist system so long as its rulers consider that it is to their interest to do so, and so long as the advantages of the Communist group of nations in military strength, political zeal and centralized control can be maintained." [9] For Russia the door to the future was marked "push" and no one could maintain that war, used directly or indirectly, had been abandoned by her as an instrument of national policy.[10] Almost overnight the political climate of Europe appeared to change. The old alchemy of fear and indecision gave way to a sense of urgency and determination and although the new vision was often confused in method and illogical in content the recognition was clear and unmistakable that something had to be done, and quickly, to build Europe's ramparts. It was in an atmosphere electric with tension that delegates to the Consultative Assembly of the Council of Europe convened at Strasbourg during August 1950.

[8] Rupert Emerson and Inis L. Claude, Jr., "The Soviet Union and the United Nations: An Essay in Interpretation", *International Organization*, vol. 6, pp. 1-26 (February 1952). These authors doubt that Russia would risk war under the present circumstances. That her leaders still have a "fear complex" against the West is one of the conclusions reached by Margaret Mead, *Soviet Attitudes Toward Authority* (New York and Toronto, 1951). *Cf.* Philip E. Mosely, "Soviet-American Relations since the War", *The Annals of the American Academy of Political and Social Science*, vol. 263, pp. 202-211 (May 1949).

[9] Report of the Royal Institute of International Affairs, *Defence in the Cold War: The Task of the Free World* (New York, 1950), p. 13.

[10] Quincy Wright, "The Nature of Conflict", *The Western Political Quarterly*, vol. 4, pp. 139-209 (June 1951). For an exhaustive treatment of the subject see his two-volume analysis, *A Study of War* (Chicago, 1942).

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II. *The Strasbourg Recommendations*

At Strasbourg on August 11, 1950 the idea for a European army was conceived in the Consultative Assembly. Article 1 of the statute placed defense matters beyond the purview of the Council but the statutory dike broke with news of the flooding of North Korean troops across the thirty-eighth parallel.[11] In a paroxysm of leadership which it later repented the Committee of Ministers of the Council of Europe sent a message to the Consultative Assembly the final paragraphs of which ran as follows:

> Serious though the international situation may be today, it is nevertheless a good omen that, thanks to the participation in your work of new members,[12] Europe is able to make a greater contribution than before to the cause it seeks to defend.
>
> As stated in the Preamble of the Statute, our main concern is the pursuit of peace based upon justice and international cooperation. The Committee of Ministers, meeting a few weeks after the violation of international law by Northern Korea, is anxious to restate this vital principle.
>
> The Committee suggests that the Assembly should in its turn express its devotion to the cause of peace by affirming even more categorically, in accordance with a vital provision of the Statute, its complete solidarity with the action of the Security Council of the United Nations for the defence of peace-loving peoples against aggression. . . .[13]

A British Laborite, Maurice Edelman, complained tartly that in a moment of crisis " one might have hoped that the message of the Committee of Ministers would have been a rallying cry;

[11] The whole logic of events ran against the prohibition on the Council of Europe to discuss defense. At one of the opening sessions Mr. Crawley, a British Labor delegate to Strasbourg, declared that the most compelling reasons for European unity were defense and economics and that of these " defence came first." *Consultative Assembly, Official Reports of Debates, 1949* (Strasbourg, 1949), pp. 199-200. Cited henceforth as *C. A. Reports*. The collection of *Documents and Working Papers* will be abbreviated to read, *Docs. and W. P.*

[12] As a step toward the implementation of the " Petersberg Protocol " (November 24, 1949), Germany had just been admitted to the Council of Europe but only as an associate member. This restricted membership hurt German pride and the sting of the " insult " was sharpened by the simultaneous admission of the Saar under the same conditions.

[13] *Docs. and W. P., 1950*, Doc. 9.

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it might have been a trumpet blast to Europe summoning the nations to rally their forces, but instead of a trumpet blast we have had something that sounds much more like a toot on a penny whistle." [14] Nevertheless, within three days the " toot on the penny whistle " crescendoed into a thunderous blast which shocked the startled delegates into overwhelming approval of the Churchill resolution. From the very beginning British Labor proved a determined foe of the European army project and it was, therefore, somewhat of a cruel irony that the opening of debate on the ministerial message fell to a Labor member, James Callaghan. He declared that the Consultative Assembly must support the United Nations action in Korea " with all the forces at our command " as a clear demonstration that " we are fully determined to resist aggression from whatever quarter it may come." [15] The importance of Mr. Callaghan's observation was not so much its substance but the fact that it served as a convenient precedent for those who nurtured more ambitious schemes. Later when Labor sought to hang the European army project on the technical gibbet of statutory prohibition it found itself speaking to a highly skeptical audience at Strasbourg.

The first eloquent pleas for a European army as such came from members of the French delegation. The prominent Socialist, André Philip, insisted that Europe's safety could no longer be assured by outdated national armies organized on outdated lines:

> The problem . . . is no longer that of juxtaposing all the national armies . . . but of creating a European army financed by a European fund fed by European taxes. Only insofar as we show ourselves capable of setting up this organization . . . will we succeed.
>
> And I believe, at the same time, that this is the only way to resolve a problem of which there is much talk, the problem of Germany's participation in this defence organization. . . . We cannot favour the re-establishment of a German army. . . . But once a European army is set up it would be an army responsible

[14] *C. A. Reports, 1950*, p. 38. For a full statement of his position against a European army see Edelman's essay, " Europe's Place in Western Defences ", Smyth (ed.), *op. cit.*, pp. 119-133.

[15] *C. A. Reports, 1950*, p. 32.

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> for defending the whole territory of Europe, with all the citizens of Europe. There would be no more problems of a national character. . . .[16]

French views were crystallized in two motions tabled on August 10 by François de Menthon and Paul Reynaud. The first called for the creation of a European High Commissioner for Defense who would be responsible to the Council of Europe and who would have duties similar to national ministers of defense.[17] Reynaud's motion was more comprehensive in that it asked for the "immediate creation, among the free peoples of Europe, of an effective European Authority having at its disposal a single European Army subject to European democratic control, cooperating with the United States and Canada."[18] By exhorting countries to surrender a portion of their sovereignty to a higher and more effective organ[19] he focused attention on the British delegation whose zealous care for the preservation of an unsullied national sovereignty was well known.

The clue to England's reaction came in the significant omission of any British signatures from either of the French proposals; indeed the only English move was the tabling of a rather innocuous Conservative motion by Duncan Sandys.[20] When Chairman Spaak gaveled the Assembly to order at 10:40 on August 11 the delegates had before them three resolutions designed to answer the Ministers' request for Assembly support of the "defence of peace-loving peoples against aggression." A night's reflection had brought a remarkable cohesion to British ranks and Lord Layton of the Liberal party warned that neither Conservatives nor Laborities would or could agree to any defense scheme which required federation.[21] More vehement was Norway's Finn Moe who blazed the trail for what became a solid Scandinavian, Irish and British Labor opposition to the French suggestions. Mr. Moe marveled that the French could

[16] *Ibid.*, pp. 38-40. [17] *Docs. and W. P., 1950*, Doc. 37. [18] *Ibid.*, Doc. 42.

[19] *C. A. Reports, 1950*, pp. 118-122. For summaries of his views on European needs for unity see his articles, "Pour la défense de l'Europe", *La Revue de Paris*, pp. 5-9 (January 1952), and "The Unifying Force in Europe", *Foreign Affairs*, vol. 28, pp. 255-264 (January 1950).

[20] *Docs. and W. P., 1950*, Doc. 36.

[21] *C. A. Reports, 1950*, p. 210.

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ignore the United Nations, the British Commonwealth and especially the Atlantic Community

> which, from an economic, financial and military point of view is much more vital than European unity can ever be. . . . Is the idea behind all this talk about European defence and a European Army the creation of the famous Third Force which might be independent in the world-wide struggle between democracy and totalitarianism. . . ? We should take care that European unity does not lead to European isolation.[22]

The Assembly had scarcely caught its breath from this chill blast when Winston Churchill arose to address the body. Puffing tranquilly on the omnipresent cigar, Churchill uncoiled an oratorical smoke ring which spelled out dramatic support for the projected European army. He was careful to note that "nearly all the speakers who have addressed us, including our two British Socialist colleagues, have trespassed on this hitherto forbidden territory, and its effective occupation by the Assembly has now become a *fait accompli.*" [23] Then came the broadsides in rapid sequence. Would European rearmament serve as a pretext for a preventive war by Russia? Emphatically not since the Soviets have their own calculated designs which will be neither timed nor deflected by events of this sort. How much has been done since the Brussels Pact to offset the terrible 6 to 1 odds in manpower? Practically nothing! [24] Would the West's immense superiority in oil, steel, aluminum and other materials deter aggression? On the contrary, they might become the tempting prizes which invite attack. Has Europe time to put her defenses in order? Here, for the first and only time, Mr. Churchill dropped his categorical negatives to declare that "no one can answer that question for certain" but the Ameri-

[22] *Ibid.*, p. 220.

[23] *Ibid.*, p. 224.

[24] The structural weaknesses in both the Brussels Pact and NATO were sources of grave concern. For a brief analysis see Colonel Herman Beukema, "The Military Organization of the Free World", *Proceedings of the Academy of Political Science,* vol. 24, pp. 150-160 (January 1951). The legal aspects of NATO have aroused considerable interest among international lawyers. See Sir Eric Beckett, *The North Atlantic Treaty, The Brussels Treaty and the Charter of the United Nations* (London, 1950), and Joseph Nisot, "Le Traité de l'Atlantique-Nord et la Charte des Nations Unies", *Revue de Droit International et de Droit Comparé* (Institut Belge de Droit Comparé), Nos. 3-4, pp. 145-165 (1951).

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can monopoly of the A-bomb may "constitute an effective deterrent against Soviet aggression, at least until they have . . . built up an adequate supply of atomic bombs of their own." [25] What, then, must be done? Europe must take the calculated risk to rearm; and although the Consultative Assembly had no power to act itself or to relieve governments of their duties it did have the power to make a gesture of "practical and constructive guidance" by giving approval to the resolution he was about to introduce:

> The Assembly, in order to express its devotion to the maintenance of peace and its resolve to sustain the action of the Security Council of the United Nations in defence of peaceful peoples against aggression, calls for the immediate creation of a unified European Army subject to proper European democratic control and acting in full co-operation with the United States and Canada.[26]

Stressing a duality of needs Churchill, first, had called for immediate action to build up Europe's strength as a means of bolstering the bargaining position of the West *vis à vis* Russia; and, secondly, he had insisted on the necessity for close coöperation between this European army and the North American partners. Beyond these items was room for stratospheric deductions and fuzzy debate. Particularly vague was that judiciously considered imprecision—"subject to proper democratic control". The head of the Labor delegation, Hugh Dalton, pounced on this ambiguous phrase [27] and called for additional time to study the issue. Despite the plea the motion was jostled off to a "Committee of Twenty" which in less than an hour returned it to the Assembly with a revision which placed the "European Army subject to proper democratic control *under the authority of a European Minister of Defence.*" [28] Churchill assented to the nine-word addition and the motion swept to a

[25] *C. A. Reports, 1950,* p. 226.

[26] *Docs. and W. P., 1950,* Doc. 47. See also *C. A. Reports, 1950,* p. 228.

[27] *Ibid.*, p. 262. Glenvil Hall, who succeeded Dalton as chairman of the British Labor delegation, complained that "none of us has had an opportunity of examining it thoroughly or discovering its implications" (p. 302).

[28] Italics indicate the Committee's insertion.

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resounding victory by a vote of 89 to 5 with 27 abstentions.[29] The bulk of abstentions came from Scandinavian, German and British Socialists. The unmistakably clear stand of the British and Scandinavians had no counterpart among the German Socialists. Carlo Schmid, in a rather vague way, said that the German Social Democrats supported the motion in principle but felt that " since the present legal and political status of the German Federal Republic prevents us from making a real contribution within the framework of the motion . . . we feel it is best for us to abstain from voting." [30]

Aside from an ambiguity which the amendment failed to dispel, the one remarkable feature of the whole proceedings was the fact that the revised Churchill resolution was virtually the twin of Reynaud's motion which had been conveniently withdrawn by its sponsor when the British leader entered the picture. Somehow or other the federal band wagon which Reynaud, Philip and De Menthon so laboriously had been pulling was now hitched to the stronger and more colorful British work horse. That Churchill had been outmaneuvered by the French bloc intent on using the European army scheme as a wedge for federation seems a reasonable conjecture,[31] and this surmise is strengthened by an examination of subsequent developments. On the 18th Philip told the Assembly at Strasbourg that it " must realize the implications of what is being done " [32] and Reynaud took it out of the realm of implication by specifically demanding the creation of European Ministers for each of the major sections of European life, including defense. Had the

[29] *C. A. Reports, 1950,* p. 310. See *Docs. and W. P., 1950,* Doc. 52, for the complete text of the revised and approved motion.

[30] *C. A. Reports, 1950,* p. 300. For an amplification of Schmid's views see his article, " Die Aussenpolitik des Machtlosen ", *Aussen Politik,* pp. 11-19 (January 1952). Speaking for the Adenauer government Herr von Brentano pledged Christian Democratic support for the resolutions, *C. A. Reports, 1950,* p. 298.

[31] This was the author's impression after having talked to some officials of the Council of Europe at Strasbourg in November 1951.

[32] *C. A. Reports, 1950,* p. 728. It was apparent that these French delegates recognized that the German military danger was less pressing than the political danger and that the only solution was to include Germany within a federated Europe. This reasoning was developed by Michel Mouskhely and Gaston Stefani, *L'Europe face au fédéralisme* (Strasbourg and Paris, 1949), esp. pp. 61-65.

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Reynaud-Philip approach won Assembly support it would have led, according to Stefano Jacini of Italy, to the achievement of the "most substantial and most durable part of European federation. . . ." [33] Churchill's motion was manna for federalists' banqueting and it is no surprise that they gave it a resounding post-prandial belch of approval.

On the other hand, Churchill himself viewed his approach not as a wedge toward federalism but as a lever to pry open American commitments for Europe by demonstrating Europe's readiness to help itself. Speaking to the House of Commons a month after his tour de force at Strasbourg, Churchill called for sixty to seventy divisions for the European army but the really significant part of the speech was his request for an American contribution which would amount roughly to 20 per cent of the total forces.[34] Clearly even in its composition the European army was quite a mongrel.

Still unanswered were important questions of structure. How would the European Defense Minister be selected and by whom? What powers would he have? What should be the liaison between the European army and the North Atlantic forces? How should German contingents be integrated into the force? That these problems remained unsolved was the fault of neither Churchill nor the Consultative Assembly: all that could be done in that body was to "toot the penny whistle" in the hope that actual implementation and execution would be undertaken by the respective governments.

III. *The Pleven Plan*

Events moved rapidly, hurried onward by the changing fortunes of war in far-off Korea. Washington pressed for effective action to bring Germany into the defense forces of the West. As a step in that direction the three Foreign Ministers of France, England and the United States announced on September 19, 1950 their approval for fitting German units into an integrated European force and declared their readiness to revise the Oc-

[33] *C. A. Reports, 1950,* pp. 738-740.

[34] House of Commons, *Debates,* vol. 478, cc. 1389-1390. Germany, Italy and the United States would contribute ten divisions, France twenty, Benelux three, and perhaps three more from England.

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cupation Statute. The following day the North Atlantic Council announced a five-point plan which would allot Germany an essential rôle in the Western security system. Coincident with these developments was the alarming comportment of certain German industrialists who, confident that Western rearmament meant an end to both demilitarization and decartelization, began stalling tactics with the Schuman Plan. For the West to encourage and abet German rearmament without surrounding it with proper safeguards caused a wave of apprehension among the nations which had fallen victim to German aggression. As the keystone in the defense arc France felt a particularly heavy responsibility and observers wondered if she were equal to the gigantic task; neutralism, *incivisme*, communism and party strife were sapping her creative energies. No encouraging developments had appeared to alter the gloomy estimate of *The Economist* (London) which on November 24, 1949 had expressed alarm that France had undertaken rearmament in a "mood of polite despair".

Time began to press heavily and just when it appeared that France would succumb to a stupor of indecision she exhibited that traditional and amazing Gallic quality *se débrouiller* (to get out of a fix).[35] Her dramatic answer came on October 24, 1950 when René Pleven [36] presented the government's program to the French National Assembly. A rather brutal dissection of the Premier's stylized pronouncement reveals the French position essentially in these terms: [37]

1. France admitted the necessity of German participation in Western defenses.

[35] The term is borrowed, with gratitude, from Donald C. McKay's admirable study, *The United States and France* (Cambridge, Mass., 1951), p. 42.

[36] Perhaps it was appropriate that the EDC should receive official support through Pleven. His father had been director of military studies at Saint-Cyr; he himself had ridden into prominence as a De Gaullist although he broke with the General in January 1946 over the issue of credits and constitutional reforms.

[37] The discourse is printed in full in *Chronique de politique étrangère*, vol. 5, pp. 588-591 (September-November 1952). See the following: Louis Koeltz, "L'armée européenne", *La Revue de Paris*, pp. 30-40 (February 1952); "The European Army", *Round Table*, No. 165, pp. 37-43 (December 1951); and H. G. L., "The European Defence Community", *The World Today*, vol. 8, pp. 236-248 (June 1952).

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2. The German contribution could be made only in a European army which represented a " complete fusion of the material and human elements ". For this reason, integration must be on the lowest possible level.
3. The European army must be indissolubly linked to a European political authority which would exercise the necessary democratic controls.
4. Executive work would be entrusted primarily to a European Minister of Defense who would determine the contributions in men, equipment and materials from each country. He would be assisted by a Council of Defense.
5. The army would be financed through a common budget.
6. In regard to both strategy and organizational requirements the European army would be used in accordance with obligations assumed under the Atlantic Pact.
7. Each country would retain control of that part of its existing army which was not incorporated in the common force (overseas and police units) although the European Defense Minister could, for a particular task, release part of the pooled national army at the request of the participating countries.

No attempt was made by M. Pleven to conceal his indebtedness to the Strasbourg Recommendation and the comment his proposal evoked followed the main lines of the Strasbourg pattern. The National Assembly received the Plan with mixed feelings but only the Communists and the De Gaullists came out flatly against it.[38] Outside France Count Sforza warmly welcomed the suggestion but Dr. Adenauer demanded full equality for Germany as the condition " without which we shall in no circumstances co-operate ".[39] Washington blew hot and cold. Secretary of State Acheson first welcomed the Pleven Plan as a means of lessening differences between the United States and France [40] but on second thought recognized that acceptance of

[38] The vote was 343 in favor and 225 opposed. *Le Monde*, October 27, 1950. See also Leo Hamon, " Warum Frankreich misstrauisch ist ", *Aussen Politik*, pp. 216-220 (April 1952).

[39] Count Sforza expressed his views in a speech to the influential Milan Institute for International Studies on October 28, 1950. *The Times* of London on October 30, 1950 quoted Adenauer to this effect: " If we trust France we expect France to trust us "—a statement which conveniently ignores much past history. *Cf.* R. Lauret, " Frankreich und die deutschen Waffen ", *Aussen Politik*, pp. 23-27 (January 1951).

[40] *The Times* of London, October 26, 1950.

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the French proposal meant an indefinite postponement in building the effective fighting force that America felt was necessary.[41] By the time Jules Moch, the Defense Minister of France, had finished explaining the Pleven Plan to the NATO Council it was evident that Washington's second thoughts more accurately mirrored American official policy; the communiqué issued by the Defense Ministers, "every word of which was laboriously polished to reflect the dazzling promise of eventual agreement and to distract the eye from the dark shadow of present disagreement", had not the faintest rustle of approaching compromise.[42]

In one sense Britain's attitude was even more important to France. If the United Kingdom could be persuaded to cooperate in the venture the chances of softening American opposition were excellent. However, Strasbourg had been an object lesson which France could scarcely forget. That there was basis for French fears of *scepticisme à Londres* found ready witness in the *Daily Herald* which, reflecting Labor opinion, commented that M. Pleven had obviously projected his schemes "without any great hope of seeing them accepted."[43] The first hint to England's official policy toward the Pleven Plan came during the speech from the throne on October 31, 1950 when the government pledged full support toward building Europe's defenses within the Brussels Pact and NATO.[44] Nothing was said of a European army and when Mr. Churchill injected the issue by identifying the Atlantic force with a European army he was rebuked by Prime Minister Attlee for "departing from

[41] See the editorial in the *New York Herald Tribune*, October 26, 1950, which first developed this argument. One of the ablest counterarguments which called on the United States to reverse its initial hostility toward the Pleven Plan was written by two former ECA officials, Theodore Geiger and H. van Cleveland, *Making Western Europe Defensible: An Appraisal of the Effectiveness of the United States Policy in Western Europe* (Washington, 1951).

[42] *The Times* of London, November 3, 1950. Moch had told his associates: "I have come here to recommend strongly the adoption of the Pleven Plan *and only for that*." Italics mine. *Le Soir*, October 28, 1950.

[43] October 26, 1950. On the same day *The Times* had editorially hailed the Pleven Plan as a "genuine attempt at compromise" but cautioned that the federalist principles latent in the scheme presented formidable obstacles to its acceptance by any British government.

[44] House of Commons, *Debates*, vol. 480, cc. 6-7.

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his usual accuracy of language". The question which Mr. Attlee dodged by omission he now evaded by a plea for more time to study the proposal.[45]

The fall meeting of the Strasbourg Assembly was scheduled to convene on November 18. Since it afforded Churchill an international forum from which to castigate the government's "do-nothing" policy Labor was forced to speed its study. On November 13, Ernest Davies, Undersecretary of State for Foreign Affairs, told the House of Commons that it was the government's belief that defense matters were and should be barred by statute from the Council of Europe, and that the government was "unable to accept the proposals put forward for a European Army and a European Minister of Defence" since NATO already covered the field and the European army plan would only result in "duplication, confusion and divided responsibility."[46] The Conservative position at this time was scarcely one of luminous clarity but the debates did reveal their stand in terms no more accommodating than Labor's to any supranational army scheme.

Consistency was not one of the hallmarks of the diplomatic negotiations that went on during this phase. Meeting in Rome on November 5 the Committee of Ministers seemed to accept the logic of the British position and in its message to the Consultative Assembly warned that "decisions on matters of national defence do not fall within the scope of the Council of Europe"; yet in presenting the ministerial message Count Sforza watered down the prohibition considerably and the Assembly ignored it completely.[47] The ensuing debates revealed

[45] *Ibid.*, cc. 17, 33.

[46] *Ibid.*, cc. 1399, 1407.

[47] *Docs. and W. P., 1950*, Doc. 136. The Ministers expressed the hope that "problems of the defense of free Europe may be satisfactorily dealt with in the near future by decision of the Governments and the competent international organisations." The message was clear enough but Count Sforza observed that it was not "this or that article of the Statute, on that occasion, which governed our decision. It was only a question of political calculation. However, it is quite possible that you will have a future opportunity to resume the fruitful discussions of last summer. . . ." *C. A. Reports, 1950*, p. 1284. If the Ministers had slammed shut the door Count Sforza clearly intimated that it was not locked, and while he apparently made no distinction between the words "decisions" and "discussions", Maurice Schumann did so in an attempt to show that the Assembly could always *discuss* matters of defense.

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a violent undercurrent of bitterness between the French and German views particularly in regard to the question of equality for all members of the proposed association.

Perhaps the most constructive contribution at Strasbourg was the important statement made to the Assembly on November 24 by the French Foreign Minister, Robert Schuman. He clearly pointed up the differences between the Americans who seemed to want "direct participation of autonomous German military units in Altantic defences" and the French who followed the lines of approach marked out by the Assembly. He denied categorically that the French government had any plan for the political structure of Europe, declaring that "we shall have to think about this later." Finally, he gave expression to a curious logic when he insisted that the Strasbourg-Pleven Plans did not involve rearming Germany:

> To rearm a country means to make freely available to it—and to its Government—a national armed force capable of becoming the instrument of its policy. It is not arming a country to include it in a joint defence scheme, organized and directed by the whole body of participating countries which exercise collective authority over all aspects and stages of this organization.[48]

By divorcing the army plan from political federation, Schuman drove a sharp wedge into British opinion which, up to this point, had maintained a fairly solid opposition Ernest Bevin continued to find Europe's salvation only in the framework of the Atlantic Community but[49] Anthony Eden now saw no incompatibility between the two concepts.[50] The sincerity of both men underscored the confusion which still shrouded the

[48] *Ibid.*, pp. 1688-1690. For an amplification of Schuman's views see *Le Monde*, February 17, 1951.

[49] House of Commons, *Debates*, vol. 481, c. 1172.

[50] *Ibid.*, c. 1183. Eden saw the European army as a "permanent" force in contradistinction to the Atlantic grouping which was "temporary". His logic carried weight, for the next day Ernest Davies declared that the "Government did not rule out altogether the possibility of a European Army being fitted into the pattern of the Atlantic defences provided that there was no delay in building up Western defences and no danger of weakening the security of the Atlantic Powers." *Ibid.*, c. 1333. Davies' statement represents a substantial modification of his earlier position when he told the House that a European army meant "duplication, confusion and divided responsibility."

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whole project and it was obvious at the end of 1950 that the European army was little more than a skeleton which demanded hard work and hard thinking if it were ever to develop into a flesh and blood creation.

As a first step in that direction the French government decided to call a conference to meet in Paris on February 15, 1951. When the Labor government announced it would send observers only, Eden pleaded for full participation on the grounds that "here is a unique opportunity for which we may never forgive ourselves if we miss it."[51] In blunter terms Churchill cried out: "I say to the Prime Minister—beware how you continue this half-hearted policy."[52] Attlee remained unmoved and England sent observers.[53] Participating as full members in the February meeting were France, Italy, Germany, Belgium and Luxembourg—and when The Netherlands subsequently changed its observer status to full membership the Defense Community assumed the same composition as the Coal and Steel Authority. The atmosphere was hardly encouraging: Washington and London remained skeptical, Bonn demanded an equality which France was unwilling to admit on a practical plane, Belgium was restive, and military experts dubious of the efficacy of a multilingual fighting force.

The Conference began its work by considering a memorandum sent to it by the Council of Europe. This plan envisaged the creation of the European army in two stages. In the first phase all contributions by European countries to NATO should be grouped into a European army under a European Commander operating through an integrated staff. The Defense Ministers from the participating states would make up the Council. The second stage envisioned the creation of a Political Assembly, a European Minister of Defense and other permanent institutions for the control of the army.

As outlined by the French, however, there was to be formed within eighteen months a European army of ten to twelve divisions, including 100,000 Germans. In line with French insistence that integration must take place at the lowest possible level

[51] House of Commons, *Debates*, vol. 484, c. 49. [52] *Ibid.*, c. 633.

[53] Canada, Denmark, the United States, Norway, Portugal and The Netherlands also sent observers.

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the largest unit composed of any one nationality would be a combat team of 5,000 men, roughly a third the size of a normal division, and each division would have a minimum of two nationalities. Ideally, the French preferred an arrangement which would place French, German and Italian companies in the same battalion. Against this view the Germans posed in the Petersberg Plan an argument for national divisions of 15,000 men supported by artillery and able to fight against a comparable Russian division. The task of reconciling the two views was patently not going to be easy and American influence on more than one occasion was used to bring the recalcitrants into line.

The parleys, carried on mainly through a specially created Executive Committee, ran from February to July and while military experts haggled over details of *groupements*, logistics and equipment another bombshell was exploded across the Channel by Aneurin Bevan. On April 23, 1951 "Nye" Bevan arose in the House of Commons to explain his dramatic resignation from the Labor government.[54] His attack was not against the European army but against the whole concept of rearmament and in his reasoning precipitate American action was as much a danger to the peace as the Soviet threat; furthermore, it was fantastic for England to attempt to finance a £4,700 million arms program. The *Daily Herald* fulminated against Bevan as the self-appointed "idol of the wishful thinkers who look upon Socialism . . . as a device for getting everything for nothing",[55] and *The Economist* soberly assessed Bevanism as a "strange meteor in a dull summer sky. It has almost burned out now"[56]—but not before the meteor had caused a straining of necks and eyes across the Channel. That Bevan's argument had impact in France may be seen in the ap-

[54] House of Commons, *Debates*, vol. 478, cc. 35-37. To popularize his views Bevan contributed two pamphlets, *One Way Only* and *Going Our Way*, and a recent book, *In Place of Fear* (London, 1952). For a temperate criticism of Bevan's views on finance and the army see the Report of the Royal Institute of International Affairs, *Defence in the Cold War*, pp. 95 et seq.

[55] *Daily Herald*, April 24, 1951. Bevan was clearly out of step with his party. At the T.U.C. Conference in 1950 the unions had approved by a thirteen to one majority the General Council's Report dealing, among other things, with rearmament. See the *Second Report of the 82nd Annual Conference of the T.U.C., 1950*, pp. 425, 576-584.

[56] *The Economist*, September 22, 1951.

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peal which Jules Moch, as Defense Minister and as a Socialist, made to his own Party Congress in May: " Everything is not possible ", he cried, and the Socialists must have the courage to make the choice between " rearmament and social services ".[57] His answer was failure to secure reëlection to the National Executive Committee of the party. At the same time General de Gaulle told an audience of 40,000 at Toulouse that the European Defense Organization was a project for a " stateless army which is nothing but a wild chimera ".[58] Even the Consultative Assembly, which had reconvened in May, was caught in the paralysis; in the midst of discussions on defense M. Pezet of France moved closure because of the " futility of this debate ".[59] Indeed, the only constructive result of the spring session at Strasbourg was a recommendation which urged the admission of Greece and Turkey into the Atlantic Defense; yet even the value of this contribution was shattered by the projection of partisan strife by the Labor group which attempted, unfairly, to fasten the " third force " label on the Conservatives.[60]

IV. *The July Interim Report*

In view of the discouraging elements which characterized the whole defense picture in the spring of 1951, it came as a rather pleasant surprise when the five members of the European Defense Group finally approved an Interim Report the details of which were released on July 24 by M. Alphand, head of the French delegation and chairman of the conference.[61] The area of agreement included acceptance of the *principle* of equality among all participants in the organization, the fusion of armed forces under a supranational authority, and the financing of the integrated forces from a common fund. Furthermore, it affirmed that the proposed European army would be at the disposition of the Atlantic Command, and that during the transitional period the European defense institutions would exist but would delegate responsibility to national authorities. In organization the Community mirrored the Schuman Plan: it was to have a European Defense Authority (either a single Commis-

[57] *The Times* of London, May 14-15, 1951. [58] *Le Monde*, May 6, 1951.

[59] *C. A. Reports, 1951*, p. 354. [60] *Ibid.*, p. 343.

[61] The text of the communiqué may be found in *Le Monde*, July 26, 1951.

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sioner or Board of Commissioners), a Council of Ministers, a Parliamentary Assembly and a Court of Justice. As far as principle was concerned—and actually the Report represented agreement in principle rather than the agreement in detail which it claimed to achieve—the most important aspect was the acceptance of the idea of a supranational authority. This meant that in actual application the Churchill Resolution was clearly intended to subserve French needs and desires. Still unanswered were questions concerning the level at which integration could be effected, the amount each country should contribute to the common fund, and the precise nature the Defense Authority should assume. Above all, it was evident that no clear compromise had been worked out to reconcile Germany's demand for practical equality and France's fear of a revived *Wehrmacht.*

Despite these lacunae the Interim Report aroused considerable optimism since it seemed to prove what many observers tended to question, namely, the willingness and ability of European nations to pool their defense forces. On September 14, 1951 the Foreign Ministers of France, England and the United States, meeting in Washington, issued a communiqué announcing their intent to establish a new contractual relationship with Western Germany and welcoming the "Paris plan as a very important contribution to the effective defense of Europe, including Germany." However, the benediction was not enough to exorcise the evil spirits which influential segments of French public opinion continued to see in the scheme. As a matter of fact the De Gaullists intensified their opposition [62] and even Jules Moch expressed the fear that the Pleven Plan had degenerated into a camouflage for a revived *Wehrmacht*—a view shared by M. Ramadier and others high in the S.F.I.O. councils.[63] On the eve of Schuman Plan debates in the French National Assembly, the MRP delegates declared that its vote for the Coal and Steel Community did not imply support for the European Defense Community "about which they had grave doubts".[64] In Germany Dr. Schumacher challenged the legal right of Chancellor

[62] *Le Monde,* November 29, 1951.

[63] *Ibid.,* December 4, 1951.

[64] *The Times* of London, December 6, 1951.

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Adenauer to accept the Western offer while Herr Grotewohl clamored for all-German elections.

The one bright ray of encouragement was the fact that in October 1951 the Conservatives had squeaked back to power in England and it was hoped that as sponsor of the Strasbourg recommendation Churchill would bring his party and his government into more active support for the European army. These aspirations were summarily dashed by Sir David Maxwell-Fyfe who told the Consultative Assembly on November 28 that England could never participate in a Defense Community built on federalist principles. In words strongly reminiscent of those used by Ernest Davies on November 13 of the previous year, Sir David warned against "anything that would lead to confusion and unnecessary duplication".[65] Paul Reynaud expressed the continentals' profound indignation when he declared that Sir David's position was a "direct repudiation of the stirring motion as worded by the present leader of the British Government and adopted at his request in this Assembly by a huge majority."[66] He warned that British abstention from a continental force would kill hopes of it ever being approved by the French Parliament: "It would be, I fear, the end of Europe." France and England seemed astonished at the other's action and in a real sense both camps had a measure of reason on their side. The Conservatives had never once intimated that they would actually join a supranational authority and resented what they felt was a misrepresentation of their position. On the other hand, the French had never made any attempt to conceal their interpretation of the Churchill motion as a supranational project and felt incensed that Churchill, the Prime Minister, was unwilling to support Churchill, the parliamentarian.

[65] *C. A. Reports, 1951*, p. 514. See also *Le Monde*, November 29, 1951.

[66] *C. A. Reports, 1951*, p. 519. When *The Times* of London, on the 29th of November, ventured an editorial opinion that the Churchill motion had little in common with the "far-reaching plan since prepared in Paris," Reynaud fired an epistolary blast at *The Times* (December 4, 1951) in which he charged that the Paris conferees merely implemented the inherent principles of Churchill's suggestion. The writer talked briefly to M. Reynaud in Strasbourg the very day his letter to *The Times* was published, and, although the French diplomat made no effort to hide bitter disappointment, he observed that the whole defense project had had difficult sledding and that perhaps, eventually, England could be persuaded to join.

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V. *Strasbourg, December 1951*

The meeting of the NATO Council, which followed on the heels of a Paris conference between Adenauer and the three Foreign Ministers, had finished its work in Rome on November 28 by asking the six states of the potential European Defense Community to have a detailed report ready for the Lisbon Conference which was scheduled to meet in February 1952. The Prime Ministers of Belgium, Italy and Germany and France's Foreign Minister decided to meet in a special session at Strasbourg in early December to hammer out details. Since the Consultative Assembly was to convene at the same time, it appeared that here was a golden opportunity for it to assume a position of positive leadership in European affairs.

It was widely known that sharp differences of opinion existed among the Ministers. Before leaving Rome M. Schuman had told a press conference that a "supranational army implies a supranational political authority" but the Low Countries remained unconvinced on this point. In addition, Italy, France and Germany favored majority decisions in the Council of Ministers while the Benelux delegation advocated unanimity. Here were specific areas where Strasbourg might offer constructive suggestions. On December 10 the appearance of the four Ministers wrote a new page in the Assembly's history.[67] The speeches followed anticipated patterns. On the practical side Schuman and Adenauer reiterated support for majority voting in the Defense Authority on the grounds that unanimity meant a veto for each nation. M. van Zeeland argued the Belgium position persuasively against a heavy superstructure of the Schuman Plan variety and, while modifying his stand slightly on voting procedure, made it clear that in the Committee of Ministers vital decisions should be reached through unanimous consent. Had van Zeeland's position won support it is quite possible that British association with the European Community might have been more intimate.[68]

[67] For the texts of the speeches by De Gasperi, van Zeeland, Schuman and Adenauer see *C. A. Reports, 1951,* pp. 988-1000, 1002-1010. Fairly good summaries were given in *The Times* of London, December 10, 1951.

[68] See particularly Mr. Amery's speech, *C. A. Reports, 1951,* pp. 1021-1025. The Benelux group was especially anxious not to lose contact with England. See the de-

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If the Ministers expected to get a practical "lift" from the Assembly they were disappointed—yet no more keenly than the Assembly's president, Paul-Henri Spaak, whose discouragement led him to quit the chairmanship the last day of the sessions. He noted sadly that the Ministers came to seek help and "we gave none at all." Internal rifts between the federalists, the supranational functionalists and the protagonists of inviolable national sovereignties paralyzed its effectiveness. He was especially critical of Britain and declared bluntly that her constant appeals to Empire commitments struck him as a "pretext rather than any valid reason".[69] Yet within a fortnight Britain did assume a more positive approach by declaring that she would maintain troops on the continent and "would associate herself as closely as possible with the European Defense Community. . . ."[70] Meanwhile, the Ministers, working more constructively late into the night of December 12, reached agreement on a working compromise which was further refined at a subsequent meeting in Paris on December 27. In January a six-Power Conference was able to wind up final details for the report which M. Schuman presented to the Atlantic Council in Lisbon.[71]

Now for the first time the fourteen members of the NATO Council were able to give official blessing to German rearmament within the Defense Community.[72] Yet important bottlenecks still remained, largely as a result of French demands for special guarantees against Germany. On the eve of the Lisbon meeting the government of Edgar Faure had risked its existence by demanding support for its EDC policy from the French National Assembly. Faure smashed through to a substantial victory over the Communist and De Gaullist opposition by a vote of 327 to 287 but the general uneasiness with which the As-

bates in the Belgian House. Chambre des Representants, *Compte Rendu Analytique*, February 13, 1952, pp. 227 *et seq.*

[69] C. A. *Reports, 1951*, pp. 1110-1111.

[70] *The Times* of London, December 19, 1951. By early spring Schuman in a press interview had formulated the specific guarantee France would seek. *La Gazette de Lausanne*, April 29, 1952.

[71] *The Times* of London, February 8 and 23, 1952.

[72] The text of the Lisbon communiqué may be found in the *Bulletin of the Department of State*, vol. 26, pp. 367-368 (March 10, 1952).

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sembly viewed German rearmament was reflected in the following four concessions it wrung from the government: (1) Germany would be blocked from full membership in NATO, (2) no German troops would be conscripted until all six nations had ratified the army plan, (3) national contingents would be integrated gradually into the European army, and (4) the United States must be asked to maintain troops in Europe as a guarantee against German withdrawal from EDC once she had armed units of her own.

France got her guarantees of American troops for Europe, and Germany (as a result of previous compromise worked out in London between Adenauer and the Foreign Ministers of England, France and the United States) was held to something less than full membership in NATO.[73] This created a practical difficulty in that Germany was required to surrender control over her armed forces and much of her defense appropriations to a supranational European Defense Community—something not required of NATO members. To correct this unbalance it was agreed at Lisbon that mutual guarantees and the closest possible liaison would be created between the two organizations.[74]

The net result of Lisbon, therefore, was to clear the tracks for the actual signing in May of the EDC treaty, a bulky document of some two hundred pages which reflected a large assortment of compromises.[75]

As finally approved the treaty accepted the principle of equality for all member states, stressed its defensive and supranational aspects and asserted the doctrine that an attack on one would constitute an attack against all. Common institutions, a common budget and common forces were calculated to give the Community the necessary degree of integration. Particularly interesting is the structure which, according to Article 8, is to

[73] Wilhelm W. Stütz, "Atlantikpact mit Vorbehalt", *Aussen Politik*, pp. 209-215 (April 1952).

[74] Details to effectuate the exchange of mutual guarantees were completed on May 6-7 at a Paris meeting of the NATO Council working under Lord Ismay. On May 13 the British government indicated officially its commitment for a close association with the EDC partners.

[75] The best summary of the draft treaty was carried in *Le Monde*, May 10, 1952; the full text of the signed treaty is available in *Chronique de politique étrangère* (Brussels), vol. 5, pp. 550-564 (September-November 1952).

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consist of four major organs: a Commissariat, a Council of Ministers, an Assembly and a Court of Justice.

(1) The *Commissariat* is the supranational executive body and consists of nine members elected for six-year terms according to a schedule resembling that employed for the American Senate. Duties include the coördination of organizing, training and recruiting soldiers for the European army, the nomination of officers for basic national units after agreement with the government directly concerned, and the selection of superior officers after consultation with the Council of Ministers. The creation of a board rather than a defense commissioner represents a victory for the Italo-German view which felt that a single commissioner would invariably be a Frenchman.

(2) The *Council of Ministers*, reflecting national interests, exercises restraint over the Commissariat through its power to withhold approval on critical issues. A complicated voting procedure does not hide the fact that Belgium (which had consistently insisted on unanimity vote where vital decisions such as mobilization and allocation of moneys were concerned) had won its point.

(3) The *Assembly* is composed of the same delegates who constitute the deliberative body of the Coal and Steel Authority and has roughly the same functions. At its annual session the Assembly is to debate reports submitted in advance by the Commissariat and may make recommendations when so minded. Its most important immediate strength rests in the power to remove the Commissariat through a two-thirds vote of censure (Art. 36) but there is hope in some quarters that Article 38 will make the Assembly the truly creative organization within the Community. This provision empowers that body to explore possibilities for the creation of a federal or confederal Europe and to examine prospects for erecting a bicameral parliament which would have real legislative powers. It should be remarked, therefore, that the existing Assembly is largely a stopgap, that its work is provisional in nature, and that it represents a compromise between those who would use the army to achieve full European Union and those who would hold to the present line of advance; it is a compromise which leaves unresolved the critical problem of over-all authority.

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(4) The *Court of Justice* (Articles 51-67), imitating the Assembly organization, utilizes the personnel of the Coal-Steel judiciary and is empowered to determine all legal disputes arising under the treaty.

The military provisions are highly technical but to the layman the important fact is that the Defense Community anticipates the creation of forty-three *groupements* (each composed of some 13,000 men) and that Germany is expected to contribute twelve such divisions. The basic unit of the European army would be a corps of 80,000 soldiers while the largest national unit in the air branch would be 75 planes. Naval forces are also included within the Community and all services operate under integrated commands.

VI. *Retrospects and Prospects*

The twenty-one-month interval between the launching of the European army project at Strasbourg and the actual treaty signing in Paris reveals very definite trends which permit some minor prophesies. For one thing it should be recalled that the idea was launched at a time when Europe had been galvanized to action by the Korean War and whether that necessary sense of urgency can be maintained to assure the project's success is highly problematic. Another point for concern is the fact that the Defense Community has been built mainly through the efforts of Adenauer, De Gasperi and Schuman and the loss of power by any one of them could destroy the beautiful equilateral triangle upon which the prestige and influence of the EDC so largely repose. Furthermore, the persistent efforts to link the EDC with a European political union may seem logical but the identification of an immediate with a long-range prospect invites further delays in ratification. Finally, will the announced advances made in the use of thermo-nuclear weapons engender the conviction that land armies are obsolete and that the " push-button " war has finally arrived?

Above all, the climate of public opinion in both France and Germany has tended to become increasingly volatile. Will the French National Assembly, which has repeatedy demonstrated its nervosity at the prospect of German rearmament, have the courage and ability to go all the way toward ratification and wholehearted support? Or will Frenchmen feel that the Pleven

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Plan has been perverted by compromise? [76] Will the tensions in Africa and the drain on her resources in Indo-China frighten France into demands for greater concessions? [77]

The situation in Germany is no less confused. By raising the question of the legal compatibility of the Defense pact with the Bonn Basic Law the Social Democrats have placed Chancellor Adenauer in an awkward position and his attempts to secure an early and favorable decision from the German courts have turned considerable public opinion against the government. In addition, the Free Democrats on whom the Adenauer coalition relies for support have moved steadily toward a reactionary and nationalistic program, and the liberal leader of the party, Dr. Blücher, has been forced to give ground before the onslaughts of Dr. Middlehauve and his bloc—so much, in fact, that it is feared the party may fall captive to the neo-Nazi elements within its ranks.[78] At the other extreme is a small group of pacifists who oppose any form of remilitarization and integration with the West; under the leadership of Dr. Heinemann, Frau Wessel and Herr Bodensteiner, the last an ex-cabinet member, they have rallied to form a new party, *Gesamtdeutsche Volkspartei,* which reflects the growing support for the thesis that Germany's best chance for peace is to remain unarmed and neutral.[79] If the Soviets should make further concessions in a dramatic move to persuade Germany that by abandoning the Defense Community she could win for herself both political unity and economic freedom, would there be sufficient will to resist such tempting bait? [80]

[76] It is significant that Pleven himself recently emphasized the divergences between his original proposal and the signed treaty although he continued to express the conviction that France should ratify the treaty. *Le Figaro,* November 25, 1952.

[77] In this connection it is interesting to note that the French have concentrated their ire on Articles 13 and 107 especially of the treaty since both seem to hamper France's overseas efforts. *Le Figaro,* November 28, 1952.

[78] *Neue Zürcher Zeitung,* November 25, 1952.

[79] For an example of this reasoning see F. Baade, "Wie kann Deutschland verteidigt werden", *Aussen Politik,* pp. 254-263 (July 1951). Nor should one neglect Walter Lippmann's pioneer study, *The Cold War: A Study in U. S. Policy* (New York, 1948). Compare these views with C. G. D. Onslow, "West German Rearmament", *World Politics,* vol. 3, pp. 450-485 (July 1951).

[80] The Soviet note of March 10, 1952 which incorporated the bases for such a solution represented a startling reversal of Russian policy and a repudiation of the

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Let us go one step further to assume that the treaty has won substantial majorities for ratification in every member state. What, then, are the prospects? A brief catalogue of queries provides the best answer. Will an EDC structure which requires unanimous approval by the Ministers before certain vital decisions are reached prove too cumbersome for the rapid and effective action which crisis demands? Will forty-three *groupements* fight effectively under the untried symbol of "Western Europe" against comparable Russian divisions fighting under the proved symbolism of a national emblem? Will European patriotism survive the inevitable mistakes of war or will Germans blame French and the French blame Germans for every breach in the common defenses? Are there enough bilingual or trilingual officers available to transmit orders clearly and effectively? Will a national division obey an order to abandon the homeland for defensive positions in another country even when the order is tactically sound? [81]

The bark that is the European Defense Community looks tragically frail for the turbulent seas it must sail and it requires no small courage for individual nations to trust their destinies to it. No one dares predict its eventual destination, but it is clear that its tortured journey up to this point reflects all the fundamental tensions and fears which haunt post-war Europe.

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Prague proposals which had guided her earlier approaches. The text of the note may be found in *Etudes Soviètiques*, No. 48, pp. 89-91, and in *The Current Digest of the Soviet Press* (March 29, 1952). A London *Times* correspondent reported on May 10, 1952 that he found considerably "less unqualified support for the raising of a new army than for renewal of discussions with the Russians." See also Joseph Rovan, "L'opinion allemande et la rémilitarisation", *Politique étrangère*, vol. 16, pp. 59-74 (January-February 1951).

[81] On some of the technical problems confronting a European army see Colonel Achard-James, "Defense de l'Europe", *Revue de défense nationale*, vol. 12, pp. 280-291 (May 1951); and the two articles by Brian Tunstall, "The Military Power of Western Union", and "Some Broader Aspects of Western Strategy", *World Affairs*, vol. 3, pp. 546-557 (October 1949), and vol. 4, pp. 181-195 (April 1950). Helpful, too, are the books by B. H. Liddell Hart, *Defense of the West* (New York, 1950), and Adelbert Weinstein, *Armee ohne Pathos* (Bonn, 1951).

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FREEDOM VS. UNITY: A PROBLEM IN THE THEORY OF CIVIL LIBERTY

WHEN a political system has been under attack for a third of a century, as democracy has been since 1920, and when a nation fears the constant threat of international war, it is not surprising that a people be concerned with the sources of their national strength and with the maintenance of unity in the face of political and military attack. The widespread demand for " loyalty " on the part of civil servants, university professors, communications workers, and even employees in private industry is evidence of a growing fear of diversity, and a sense that our national unity is impaired in the face of threatened crises.

Obviously some policies invoked in the name of loyalty border on the hysterical, but we should not ignore the fact that there is a serious and reasoned argument for the suppression of some ideas in order to preserve that minimum degree of unity without which it is thought a democratic system cannot long survive. Though it may be admitted that to restrict debate would seem to violate long-cherished democratic principles of civil liberty, none the less it is claimed that as a practical matter such principles cannot be applied absolutely; that if we are to maintain an essential degree of national unity, then a wee bit of authoritarianism might be necessary in an otherwise democratic society. This is the argument of those who would deny to Fascists, to Communists, to anti-Semites, and to other " un-Americans " that freedom of speech which our traditional civil liberties have heretofore accorded to all. It is this argument which we wish to consider here.

The argument for some coercion of belief as a means of maintaining national unity takes two forms which have sufficient appeal to supporters of democratic government to warrant examination. One stems from a religious conviction and the other from a historical analysis.

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I

The religious argument maintains that a democracy is a moral community resting on certain fundamental ethical and religious principles; that the power of the state should be used to suppress any significant challenge to these principles; and that certain political and civil rights can and should be denied to those who do not accept them.

This is really a democratic version of the ancient doctrine, maintained by political philosophers of every age, that the political order has a moral purpose in the service of which it must exercise its power. The moral purposes may change from age to age, and the forms of governments may be redesigned as the occasion demands, but the underlying idea remains the same: that the coercive power of government should be used to gain adherents to certain standards of moral behavior, and to prevent the undermining of basic moral and religious principles.

Early examples of democratic government set up by the Puritans in England and in the colonies reflected such a view, and even Milton in his *Areopagitica* denied free speech to papists on this ground.[1] In both Catholic and Protestant thought today there are exponents of this idea that freedom of speech and religion should be limited by an adherence to a basic religious truth or a moral law.[2] They might argue, for example, that the advocacy of polygamy must be prohibited since it is a doctrine contravening the fundamental moral law which our society must uphold.

The reasoning in this position is clear enough. If the society has a moral purpose, those who deny or challenge this moral purpose tend to keep the society from realizing it, and therefore they must be suppressed.

One statement of this doctrine which has come to our at-

[1] John Milton, *Areopagitica and Other Prose Works* (Everyman Library, London, 1927), pp. 37-38.

[2] Statements of the Catholic position are to be found in the encyclical *Immortale Dei* (1885); and in John A. Ryan and Francis J. Boland, *Catholic Principles of Politics* (New York, 1940), chs. vii, viii, x, and especially their commentary on *Immortale Dei*, pp. 336-342. For a Protestant statement, see Henry Smith Leiper, "What Limits Has Freedom of Religion?"; *Christianity and Crisis*, vol. V, No. 12, July 8, 1945, pp. 5-6.

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tention is that of Henry Smith Leiper, American Secretary of the World Council of Churches, in an article entitled "What Limits Has Freedom of Religion?" [3]

Mr. Leiper expresses concern over the fact that recent statements on religious freedom by various Protestant groups fail to recognize the limits necessary to freedom of religion. He feels that we cannot allow freedom to doctrines which in their practical application lead to such barbarous exhibits as Buchenwald, and he says: "It is equally plain that no man in his senses would insist that liberty be given to people who wish to teach that the earth is flat, that plural marriage is obligatory, or that poison be fed to all sick persons."

The substance of his argument and his conclusions is indicated by these quotations:

> In our kind of a world it has already been recognized that air traffic requires a universal code for the safety and convenience of all users of the air lanes over land and sea.
>
> Just why it is thought reactionary or illiberal to recognize the necessity of a "cosmic traffic code" would be hard to say.
>
> People capable of understanding that necessity should, without too much difficulty, accept the idea that in human relations a similar necessity has become apparent. . . .
>
> The plain fact is that the concept of universal moral law has got to come back into common acceptance or there can be no liberty of any kind and certainly no order long enduring. And by that code all religions have to be judged as well as all other human interests and activities.

But who is to interpret and enforce this code?

> The conclusion that seems most acceptable is therefore that religious freedom must be limited by the moral law. The ecumenical church is the best interpreter—although admittedly a finite and imperfect one—of that moral law. But government, recognizing the prerogatives of the churches and learning from them, is the agency which, through the courts, can alone be entrusted with the enforcement of such limitations as appear in the public interest.

[3] Leiper, *op. cit.*

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What answer can be made to these arguments that some underlying principles must be protected from challenge because their promotion is a basic object of the society?

Part of the response to the argument based on the specific moral objectives of a democratic government will be conditioned by what we consider those objectives to be. If we accept as the primary moral objective of democratic government the propagation and winning of adherents to a particular moral code—as Catholics and Leiper seem to do—then perhaps the techniques of suppression may serve this moral purpose. It can be seriously questioned, however, whether such an achievement would be a fulfilment of essential Christian doctrines, and whether such a moral purpose is really the objective of liberal democratic society. The problem facing those who advocate use of suppression to promote Christian principles is this. Is the essential core of Christianity in the adherence, coerced or otherwise, to a particular moral code, or is it in the free willing obedience to it? Is it the actual avoidance of sinful acts, or the *free choice* of Christian principles and the good life, which counts? Is it the cloistered virtue, or the choosing of good despite the temptation of evil, which is important? If it is the correct exercise of free choice that is essential to Christian morality, then the technique of suppression can never effectively promote it. If virtue, cloistered or otherwise, is essential, the value of democracy in promoting it might be questioned. Historically speaking, the firmest advocates of strict adherence to a moral code expounded by a church have not been strong apostles of democracy. They have usually supported an authoritarian and preferably a clerical or theocratic political system as a more effective way of securing obedience to a moral code.

If our democracy is to be considered as a moral community, its moral objective is the realization, not so much of a specific moral code, as of the full development of the free individual. Though the church may guide him, neither the church nor the state can secure such an end for him. The choice of the road to this end must be his own.

To the argument, which uses the moral purpose of a democratic community as the basis for determining political rights

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and privileges, we reply, first, that it misconceives the nature of that moral purpose, and, second, that the suppression of advocates of contrary moral ideas is destructive of the community's moral purpose.

One particular aspect of Mr. Leiper's argument is worthy of special notice because it highlights the relationship of democratic government to the Christian tradition. As he points out, if a particular moral law is to be enforced and the rights of those who challenge it are not to be protected, then the problem arises: where are we to find an authoritative interpretation of this moral law? Catholic doctrine is perfectly clear on this point, for it claims that the Roman Pontiff is the only authoritative interpreter of Christian principles and that government should therefore recognize the special position of the Catholic Church as the True Church, and enforce the moral law as interpreted by the Pope.

Protestants, of course, reject these exclusive claims of the Roman Church, but what they produce in their place is often merely a Protestant version of the same principle. Leiper's suggestion that the state keep its ears tuned to the moral pronouncements of the "ecumenical church", that is, the whole body of Christian churches, is a vague and generally tolerant expression of the fundamental Catholic principle that there must be some recognizable voice expounding the moral law if it is to be enforced by political authority. Mr. Leiper's suggestion is more tolerant, however, only because it is less recognizable. What, we may ask, is the ecumenical church? How does it operate? How does it reach decisions as to the real meaning of the moral law? Does it consist of only Presbyterians, Baptists, Congregationalists and Episcopalians, or does it also include the Unitarians, Universalists, Seventh-Day Adventists, Jehovah's Witnesses, Mormons, and the I-Am Movement? If it does not include all of these, which ones does it exclude and on what basis are the ecumenical sheep separated from the sectarian goats? He himself seems to exclude the Mormon Church; but from the point of view of an observer uncommitted to any particular sect, it might be difficult to see why the revisionism of Joseph Smith and Brigham Young was less valid or less truly

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Christian than the revisionism of Martin Luther, John Calvin, John Knox, or Walter Rauschenbush, the disciples of whom would probably be admitted to Mr. Leiper's ecumenical councils. And what place would Mohammedans, Buddhists, Confucianists, and other religious groups have in our society?

This is enough to illustrate the difficulty in giving the state the responsibility of enforcing any particular moral law as interpreted by some special church authority. The state would become the servant of a church, and thus recognize an official state church and a state religion. This basic relation would not be destroyed—though it might be obscured—by hiding it behind the indefinables of the concept "ecumenical".

It is precisely this difficulty that is avoided if we accept the democratic doctrine of the separation of church and state. Under this doctrine, as it has developed in the United States, all religious groups from the Roman Church to the self-proclaimed prophets of the I-Am Movement and Indian mystics are permitted to preach and teach their views and are equally free to win adherents.[4] What the state enforces is not a belief in a particular moral law but the obedience to those laws governing morality which have won the consent of the majority of the community. Those laws are open to challenge and change, just as are other matters of public policy.

The fundamental implications to be drawn from the separation of church and state is that the sole authoritative interpreter of the moral law to which the state can listen is its citizenry. The citizens may listen to the voices of the churches, but the government can listen only to the voices of those to whom it is responsible—the people. To still the voices of any of its people is to undermine the foundations of its own morality.

II

The historical analysis upholding coercion of belief as a means of securing national unity has a somewhat different basis. Its argument rests, not on the postulate of a moral purpose for a

[4] *Cf.* Evarts B. Greene, *Religion and the State* (New York, 1941); Henry P. Van Dusen, *et al.*, *Church and State in the Modern World* (New York, 1937), ch. i and pp. 178-183. For the constitutional problems involved, *cf.* Osmond K. Fraenkel, *Our Civil Liberties* (New York, 1944), ch. vi.

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society, but on the observation that, where democratic societies have been successful, there has been a general unity of thought. Thus it is an argument, not for a particular principle which must be maintained, but for some principles which can serve as the basis of unity in the society. When this unity on fundamental ideas exists, then, the argument continues, the democratic process can operate successfully. When this unity is lacking, the democratic structure will succumb to some form of authoritarian state. One of the better-known expressions of this principle is in Lord Balfour's Introduction to Bagehot's study of the English Constitution. Commenting on the underlying conditions which made it possible to operate successfully, Balfour saw the agreement on fundamentals as an essential condition.

> Our alternating Cabinets, though belonging to different Parties, have never differed about the foundations of society. And it is evident that our whole political machinery presupposes a people so fundamentally at one that they can safely afford to bicker; and so sure of their own moderation that they are not dangerously disturbed by the never-ending din of political conflict.[5]

A similar thought is expressed in several ways by Carl Becker in his essay "When Democratic Virtues Disintegrate".

> In practice, therefore, democratic government turns out to be government by political parties.... Under these circumstances government by discussion works best when there is nothing of profound importance to discuss and when there is plenty of time to discuss it. The party system works best when the rival programs involve the superficial aspects rather than the fundamental structure of the social system, and majority rule works best when the minority can meet defeat at the polls in good temper because they need not regard the decision as either a permanent or a fatal surrender of their vital interests.[6]

And referring to the slavery issue in American politics, he says:

[5] The Earl of Balfour, "Introduction", in Walter Bagehot, *The English Constitution* (World Classics Edition, London, 1933), p. xxiv.

[6] Carl Becker, *New Liberties for Old* (New Haven, 1941), pp. 106-107.

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> In the United States conditions were equally favorable after 1815 so long as the compromise of interests involved nothing more fundamental than tariff schedules and internal improvements. But the Missouri Compromise sounded in Jefferson's ears like a fire bell in the night, and the Era of Good Feeling definitely ended in 1832 when William Lloyd Garrison, insisting upon telling the truth about slavery, refused to compromise and would be heard. The incident was a startling disclosure of the fact that although free speech and the habit of compromise are democratic virtues, there are some issues that cannot be raised and some things that cannot be heard in a democratic society without impairing the efficiency of the democratic method. Slavery was such an issue.[7]

Although neither Bagehot nor Becker advocated suppression of particular doctrines, yet on the basis of such observations as these, some conclude that if democracy is to be preserved, the power of the state must be used to prevent any serious challenge to the fundamentals on which the society seems to rest. Consequently all ideas at variance with these fundamentals should be suppresssed.[8]

What this might lead to in a practical way is demonstrated by our experience in trying to promote unity by requiring school children to salute the flag when this act violated their religious convictions. As a way of attacking and inhibiting the spread of the unpopular religious and political doctrines of the Jehovah's Witnesses, many school boards required that all children in the public schools salute the flag, an act known to be contrary to Witness principles. Although the Supreme Court eventually held these laws to be unconstitutional as a violation of religious freedom,[9] nevertheless in its first decision regarding them, Justice Frankfurter, speaking for a majority of the court, upheld the flag salute laws on precisely the grounds we have been discussing, the need for national unity:

[7] *Ibid.*, pp. 107-108.

[8] *Cf.*, among others, Christopher Dawson, *Religion and the Modern State* (London, 1935), pp. 27-29; Wilfrid J. Parsons, *Which Way Democracy?* (New York, 1939), pp. 133-135.

[9] West Virginia State Board of Education v. Barnette, *319 U. S. 624 (1943)*.

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> In a number of situations the exertion of political authority has been sustained, while the basic considerations of religious freedom have been left inviolate. . . . In all these cases the general laws in question upheld in their application to those who refused obedience from religious conviction, were manifestations of specific powers of government deemed by the legislature essential to secure and maintain that orderly, tranquil, and free society without which religious toleration itself is unattainable . . . . the question remains whether school children, like the Gobitis children, must be excused from conduct required of all the other children in the promotion of national cohesion. We are dealing with an interest inferior to none in the hierarchy of legal values, national unity is the basis of national security. . . .
>
> Unlike the instances we have cited, the case before us is not concerned with an exertion of legislative power for the promotion of some specific need or interest of secular society—the protection of the family, the promotion of health, the common defense, the raising of public revenue to defray the cost of government. But all these specific activities of government presuppose the existence of an organized political society. The ultimate foundation of a free society is the binding tie of cohesive sentiment. Such a sentiment is fostered by all those agencies of the mind and spirit which may serve to gather up the traditions of a people, transmit them from generation to generation, and thereby create that continuity of a treasured common life which constitutes a civilization. We live by symbols. The flag is the symbol of our national unity. . . .[10]

What answer is there to this historical analysis that there must be agreement on fundamental principles if democratic government is to survive, and the conclusion that political power should therefore be used to force such agreement by coercion and suppression if necessary?

There are two major difficulties in this argument which can render its conclusions invalid. The first difficulty lies in determining those "fundamentals" on which agreement should be forced; the second is that the argument misconceives the nature of unity in the democratic state.

[10] Minersville School District v. Gobitis, 310 U. S. 586, 595-596 (1940).

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III

If agreement on fundamentals is necessary, the question immediately arises, what fundamentals must be agreed upon, and how are these fundamentals to be determined? As Professor Friedrich has pointed out in his analysis of this issue,[11] those who argue that agreement on fundamentals is necessary have failed to state clearly what those fundamentals are. The reasons for this omission are fairly simple. Any clear statement of fundamentals which must be accepted as a basis of democratic unity would raise the question: by what authority are these declared to be the fundamentals on which unity of belief is necessary? They cannot be determined democratically because then their sole criterion of validity would be their ability to maintain themselves against challenge in the free market place of public opinion; thus any attempt to enforce their acceptance by a use of the state's coercive power would destroy their democratic foundation.

The choice of these fundamentals must therefore be on some other basis. This means that they become another expression of an " elite " doctrine and of authoritarianism. In the absence of an adequate test of what is really fundamental, the argument becomes a means of seeking support for some principle which is either no longer or not yet widely enough held to make its supporters feel secure.

Another difficulty with the concept of fundamentals and the reason they cannot be defined except on an authoritarian basis is that in practice the test of the fundamentals essential for unity is not a test of declarations but a test of behavior. Whether national unity is in a healthy condition is determined, not by declarations of principles, but by whether the state is successful in getting its laws obeyed, and by whether its regular processes and institutions operate in an effective manner. As long as the lives and civil rights of the majority are respected,

[11] Carl J. Friedrich, *Constitutional Government and Democracy* (Boston, 1941), pp. 161 *et seq.*, and *The New Belief in the Common Man* (Boston, 1942), ch. v. The argument I present owes a great deal to Professor Friedrich's discussion of the problem.

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as long as the majority-forming process is unimpaired and election results are accepted in good grace, it is difficult to see how one can claim that a democratic government is collapsing. The point is that revolution is the real test of the fundamentals which determine national unity. If disagreement results in revolution and governmental breakdown, then we know it is on a matter that is "fundamental" from the point of view of social unity; but if disagreement does not result in revolution, if its settlement can be reached by the regular democratic process of consent and compromise, then obviously it is not a "fundamental" from the point of view of national unity.

At heart, the problem of "fundamentals" is a problem of behavior patterns, not of declarations of principles, and any attempt far in advance of events to translate declarations of principles into predicted behavior patterns is difficult almost to the point of impossibility. This difficulty arises because people have many principles to which they feel a fundamental allegiance, and the violation of them by governmental action would be unacceptable. Yet, to take violent or unlawful action to protect one principle they hold (that is, one group of values) might mean the sacrifice of other values. Whether a person will be content with the values left to him or whether he will risk their loss in order to try to regain those being taken from him by governmental action usually cannot be determined ahead of time; his actual conduct will depend to a large extent on how the crisis shapes up.

Illustrations of this analysis are before us in the transformations going on in England. Harold Laski predicted that the parliamentary processes would break down when the Labor party took power and began the socialization of English industry.[12] He assumed that the basic economic organization of the country was a fundamental on which there was considerable disunity, and that the Conservative leaders would refuse to accept the changes gracefully. But we saw the post-war process of socialization begun, under protest from Conservatives to be sure, but without any collapse of democratic processes or institutions. How is this to be explained? Was the disagreement between the Labor party and Britain's industrial leaders less sharp in

[12] Harold Laski, *Parliamentary Government in England* (New York, 1938), ch. i.

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1938 than Laski thought? Probably not. The explanation was probably twofold. First, what might have seemed to labor and capital as a fundamental disagreement in 1938 seemed to be less so in 1946. The events of the Second World War changed their views of what was fundamental. Second, when actually faced with the choice of accepting socialization, or giving up parliamentary processes, internal peace, and national strength in order to combat socialization, the values of capitalism seemed to the Conservatives less important. On the other side similar compromises and adjustments were also made. Thus the actual behavior pattern was determined to a great extent by the way the crisis developed, and by the judgment of comparative values made at the time action had to be taken.

We see, then, that the concept of fundamentals as consisting of clear-cut definable principles, agreement on which is essential if national unity is to be preserved, is an illusory concept and that the argument for suppressing antidemocratic groups because their doctrines appear to deny these fundamentals falls to the ground.

There is one form of the theory of agreement on fundamentals which we have not mentioned because, though it uses Balfour's language, it is really an abandonment of his position. This is the view that the fundamental principle on which there must be agreement is the acceptance of democracy itself, or the "agreement to disagree". As Erich Hula states it, "Democracy is doomed when there is not, or is no longer, common agreement at least on the point that political decisions have to be based rather on consent than on force. There can be no doubt, however, that such an agreement presupposes in itself common fundamental objectives." [13]

This is a truism unless one starts to erect special tests of an acceptance of democracy and of willingness to agree to disagree. If what is meant is real acceptance of those decisions made by consent, then the test of agreement on such fundamentals is one of behavior, not of doctrine. What these statements amount to is "where you have democratic behavior, you can have democracy, and there can be no democracy without democratic behavior."

[13] Erich Hula, "A Discussion", *Social Research*, vol. VI, p. 284 (1939).

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If we go beyond this and claim that what is required is tolerance or acceptance of disagreement as a matter of doctrine, we give democracy very little chance of survival, for tolerance as a matter of principle is rejected by many who nevertheless accept it as a practical mode of behavior. The largest groups that reject it as doctrine are not the Fascists or Communists, but those who believe there is one true moral law which all should accept. There are large numbers of sincere Catholics and Protestants who view religion and moral truth in this way and yet who are tolerant of others, not because religious and moral principles require it, but because there is no other way of behaving in America consistent with public order. The agreement to disagree is largely a pragmatic choice; only a few see it as an expression of fundamental philosophy. Thus, to speak of agreement on fundamentals, as a willingness to "agree to disagree" and to accept decision by consent, is really to see the problem in terms of behavior patterns, not in terms of doctrines. Therefore, though Balfour's language may be adopted, his basic concept of agreement on fundamentals as an agreement on doctrine is by implication rejected.

Though the concept of doctrinal "fundamentals" is too vague to be of value, the problem with which Balfour was concerned is still here: why are people willing to accept the democratic processes? why do they accept decisions made by consent? why do they agree to disagree? The question as to the conditions under which democratic behavior is likely to obtain is still to be answered.

IV

Balfour, Laski, and others thought that an agreement on fundamental principles was the answer to this question and was therefore the key to democratic unity. Their major error was a misconception of the nature of democratic unity.

Constitutional democracy is a paradoxical political system because it is a system which in the long run has great stability, and yet it is based on diversity of views, and on conflicts regarding what Balfour and Laski might consider to be "fundamentals". Friedrich has pointed out that democratic government can thrive where there is conflict and diversity regarding

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the fundamentals of religion, of economic doctrine, and of national cultural interests, as in Switzerland and the United States.[14] The more significant point, however, is that constitutional government is likely to develop *only* where there is some such diversity or conflict regarding fundamentals. The origin of modern constitutional democracy is to be found in the religious, economic, and class conflicts and diversities of the seventeenth and eighteenth centuries.[15] This is reasonable because the essence of constitutional government is the subjecting of government to "effective regularized restraints"[16] and the removal of certain issues from the reach of governmental power.

Government is subject to restraints only when people fear that vital interests will be jeopardized if those in power are unrestrained, and this fear often arises from disagreement on fundamentals of doctrine. The correct interpretation of the situation is that, because minorities fear for their vital interests, they insist that restraint be placed on government and that the issue of their vital interest be removed from the area of legitimate public policy. Once this is done, they are willing to accept the processes of majority decision in matters of public policy because that public policy does not affect their particular vital interests.

Thus the key to democratic unity is not so much in agreement on fundamentals of doctrine or interests, but in agreement to remove from the area of political action those issues upon which there is a fundamental disagreement. This is the origin and the importance of the emphasis on freedom of religion and freedom of thought and expression as contained in our Bill of Rights. Because there was disagreement on fundamentals of doctrine, issues of doctrine were removed from the area of public policy. As Mr. Justice Jackson said in the second flag salute case, when the court held these laws to be unconstitutional and reversed its earlier decision:

[14] Friedrich, *Constitutional Government and Democracy*, p. 22, and *The New Belief in the Common Man*, p. 157.

[15] *Cf.* Charles H. McIlwain, *Constitutionalism, Ancient and Modern* (Ithaca, 1940), pp. 98-99, on the importance of religious schism for modern constitutionalism; also Friedrich, *Constitutional Government and Democracy*, pp. 23-33.

[16] Friedrich, *Constitutional Government and Democracy*, p. 121.

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> The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech and free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections.[17]

The fact that there is some diversity and disagreement on fundamentals does not mean that there are no common objectives which form the basis of democratic unity. There are numerous common objectives, some, as Hula suggests, in the area of fundamental interests, but many also which are pragmatic and utilitarian. Protection against the hazards of fire, famine, flood and disease are objectives on which most people will agree, and by and large a democratic government will pursue only those objectives for which it has the support of the large mass of its citizens. Certainly an element in the formulation of a particular policy is the ability to enforce it. If a policy touches such vital interests that important sections will not accept it peacefully, then, generally speaking, the policy will be significantly changed or dropped.

Here, then, is the key to democratic unity and an important difference between democratic and authoritarian states. In a democracy, where there is disagreement on vital issues or interests, that is, on fundamentals, the issue does not become an object of public policy. In authoritarian states an attempt may be made to use the coercive power of the state to force agreement on those issues and to secure acquiescence in public policy regarding them.

The argument we have been presenting, though it refutes Balfour's contentions and Frankfurter's conclusions, does to a large extent sustain the observations of Becker. In democratic government the parties do fight over " the superficial aspects rather than the fundamental structure of the social system ". This is not, however, because there is no disagreement over the fundamental structure or belief, but because those disagree-

[17] West Virginia State Board of Education v. Barnette, 319 U. S. 624, 638 (1943).

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ments are left outside the political arena. A particular word must be said, however, regarding Becker's contention that the slavery controversy showed that there are "some issues that cannot be raised and some things that cannot be heard in a democratic society without impairing the efficiency of the democratic method." [18]

The real point is, not that some things cannot be said and heard, but that some policies cannot be adopted without impairing democratic methods. Antislavery sentiments were current long before Garrison's time [19] and the problems of slavery had been present in national politics ever since the Philadelphia Convention.[20] It was not Garrison's addresses that raised the basic difficulty, it was the fact that by mid-nineteenth century certain issues of public policy such as the settlement of the West and economic relations between North and South could no longer be settled without reference to the slavery controversy.[21] The issues had gone beyond those settled by the compromises of the Constitution designed to fix the scope and limits of federal jurisdiction over the problem.[22] The new issues demanded new compromises. New agreements were necessary as to what aspects of this complex problem could be settled by the federal government, and what issues it must leave untouched. When politically acceptable compromises were blocked by the Supreme Court,[23] hope for keeping the critical issues of Southern rights out of the area of political contests disappeared.

The conclusion we must draw from this is not that democ-

[18] Becker, *op. cit.*, p. 108.

[19] Clement Eaton, *Freedom of Thought in the Old South* (Durham, 1940), ch. i, for early expressions of antislavery sentiments by Southerners. This is a valuable study of how freedom of discussion of the slavery issue gradually disappeared in the South between the time of Jefferson and Calhoun.

[20] Carl B. Swisher, *American Constitutional Development* (Boston, 1943), ch. 12.

[21] For a compact discussion of the economic causes of the Civil War, see Harold U. Faulkner, *American Economic History* (5th ed., New York, 1943), ch. 15.

[22] Constitution, Art. I, secs. 2 and 9. Also see Swisher, *op. cit.*, p. 231.

[23] Dred Scott v. Sanford, 19 Howard 393 (1857). *Cf.* Swisher, *op. cit.*, pp. 250-257; Robert Jackson, *The Struggle for Judicial Supremacy* (New York, 1941), p. 327; Samuel E. Morison and Henry S. Commager, *The Growth of the American Republic*, vol. I (New York, 1940), pp. 521-522, 525.

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racy can be successful only when all fundamental issues are settled, nor that democracy points the way for settling all issues over fundamentals. The correct view is that democratic government can and does operate successfully when some fundamental issues can be left unsettled. When men finally decided that questions of religious faith could be left unsettled, democracy rose and flourished. When it was no longer certain that some slavery issues would be left unsettled by the federal government, the democratic process faltered. Thus the key to democratic unity is not found in the agreement on fundamental principles. Rather it is found in the willingness to leave outside the sphere of governmental policy those issues on which men are unwilling to compromise.

Just as the practical consequences of Balfour's argument was Frankfurter's opinion upholding the flag salute laws, so a like consequence of our line of argument is to be found in Jackson's opinion reversing the earlier decisions and extending guarantees of religious freedom to an unpopular religious sect.

> National unity as an end which officials may foster by persuasion and example is not in question. The problem is whether under our Constitution compulsion as here employed is a permissible means for its achievement.
>
> Struggles to coerce uniformity of sentiment in support of some end thought essential to their time and country have been waged by many good as well as by evil men. Nationalism is a relatively recent phenomenon but at other times and places the ends have been racial or territorial security, support of a dynasty or regime, and particular plans for saving souls. As first and moderate methods to attain unity have failed, those bent on its accomplishment must resort to an ever increasing severity. As governmental pressure toward unity becomes greater, so strife becomes more bitter as to whose unity it should be. Probably no deeper divisions of our people could proceed from any provocation than from finding it necessary to choose what doctrine and whose program public educational officials shall compel youth to unite in embracing. Ultimate futility of such attempts to compel coherence is the lesson of every effort from the Roman drive to stamp out Christianity as a disturber of its pagan unity, the Inquisition as a means to religious and dynastic unity, the

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Siberian exiles as a means to Russian unity, down to the fast failing efforts of our present totalitarian enemies. Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard.

It seems trite but necessary to say that the First Amendment to our Constitution was designed to avoid these ends by avoiding these beginnings. There is no mysticism in the American concept of the State or of the nature or origin of its authority. We set up government by consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce that consent. Authority here is to be controlled by public opinion, not public opinion by authority.

The case is made difficult not because the principles of its decision are obscure, but because the flag involved is our own. Nevertheless, we apply the limitations of the Constitution with no fear that freedom to be intellectually and spiritually diverse or even contrary will disintegrate the social organization. To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds. We can have intellectual individualism and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes. When they are so harmless to others or to the State as those we deal with here, the price is not too great. But freedom to differ is not limited to things that do not matter much. That would be a shadow of freedom. *The test of its substance is the right to differ as to things that touch the heart of the existing order.*

If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by work or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.[24]

This opinion is a landmark in the judicial statement of the principles of our democratic society. It deserves a wide and careful study.

[24] West Virginia State Board of Education v. Barnette, 319 U. S. 624, 640-642 (1943). Italics mine.

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The conclusion that emerges from this whole discussion is that the convictions held by many sincere democrats that the nature of democratic society, either because of its moral purposes or because of the need for social unity as a basis for democratic freedoms, requires that certain fundamental principles and doctrines be held by all members of the community, and that the political authority be used to see that they are kept unchallenged, is based on a misconception as to the basis of unity in a democratic state. This basis of unity is a willingness to accept decision by consent, not agreement on doctrines, and this willingness rests not only on the existence of common interests, but also on the removal of certain issues from the sphere of politics, for example, on granting freedom of religion, of speech, and of the press.

Thus we see that the political principle underlying our civil liberties—the principle that government, though it may prohibit and punish dangerous action, cannot use its coercive power in the war of ideas—is essential in dealing with the problem of unity in a democratic society. National unity need not require agreement on all fundamentals of religion, economics, or politics, though it must require acceptance of democratic decisions in the legitimate spheres of governmental power. It is because coercive power in the realm of beliefs, whether in economics, politics, or religions, has been removed from the legitimate power of government by our Bill of Rights, that we can have effective and substantial unity behind public policies, despite diversity of beliefs and group interests.

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THE "THREE CLAUSES" IN HAWAIIAN LABOR AGREEMENTS *

SOME of the problems raised by the protection, in the Wagner-Taft-Hartley Act, of certain concerted activities of employees [1] and some of the difficulties implicit in the honoring of picket lines are sharply posed by a recent decision of the National Labor Relations Board in an important case which originated in Honolulu.[2] The protective clause reads: "Employees shall have the right . . . to bargain collectively . . . and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, *and shall also have the right to refrain from any or all of such activities. . . .*" [3]

The case arose in 1946 out of a dispute between a local of the teamsters' union and three oil companies engaged in the Territory in the sale and distribution of petroleum products. Joined with the oil companies as one of the respondents when the dispute came to the Board's Territorial office was the Hawaii Employers' Council,

* The substance of this article will appear as a chapter in a forthcoming book on *Government Intervention in Hawaiian Labor Disputes*, in the preparation of which the writer has been aided by a subvention from the Columbia University Council for Research in the Social Sciences.

[1] National Labor Relations (Wagner) Act, 49 Stat. 449 (1935), 29 U. S. C., Secs. 151 *et seq.* (1946), as amended by Labor-Management Relations Act [LMRA], 1947, 61 Stat. 136 (1947), 29 U. S. C., Secs. 141 *et seq.* (Supp. 1950). The protection to "concerted activities" in Sec. 7 of the Wagner Act is carried over, with the addition of "the right to refrain from . . . such activities," as Sec. 7 of the LMRA.

[2] In the Matter of Shell Oil Company and Hawaii Employers' Council *and* Gasoline and Oil Drivers, Warehousemen and Helpers' Union, Local 904, affiliated with International Brotherhood of Teamsters, A. F. of L. (Case No. 23-C-40); In the Matter of Union Oil Company of California and Hawaii Employers' Council and *id.* (Case No. 23-C-43); In the Matter of Tidewater Associated Oil Company and Hawaii Employers' Council and *id.* (Case No. 23-C-44). The three cases were consolidated and decided together June 22, 1948. 77 NLRB 1306 (Trial Examiner's Intermediate Report: 77 NLRB, at 1311); 22 *Lab. Rel. Ref. Man.* 1158. The consolidated cases are referred to herein as *Shell*.

[3] LMRA, Sec. 7. The words in italics did not appear in the Wagner Act.

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> a . . . nonprofit, unincorporated association, with its principal office in the City of Honolulu . . . composed of employers . . . [and] organized in July, 1943 "for the purposes," according to its statement of objectives, "of securing collective action by all employers and groups of employers to the end that stable, peaceful and harmonious relations between employers and employees will be promoted . . . and that wages and working conditions fair and just both to employer and employee be maintained and honest and faithful observance of all agreements and obligations by all parties concerned be procured, always recognizing the public interest as paramount." [4]

The dispute arose out of contract—evidently first contract—negotiations in the fall of 1945 after Local 904, in August or September of that year, had been designated as the exclusive bargaining representative of the employees of the respondent companies.[5] "The bargaining negotiations", says the Board, "covered a period of many months and included numerous conferences, at which the parties were afforded an opportunity for full and complete discussion on all matters in issue." [6]

Before the federal board was brought into the dispute, it was reported in January 1946 that the parties had "mutually agreed to seek conciliation services." [7] The territorial Commission of Labor and Industrial Relations appointed Dr. W. Harold Loper as conciliator in the dispute. On February 5, Dr. Loper advised the Commission that he had failed to bring the parties to agreement.[8] During the next few months, however, further bargaining resulted in "substantial agreement . . . on all issues except that concerning the contractual waiver of the employees'

[4] Intermediate Report, in *Shell*, 77 NLRB, at 1314 (1948).

[5] *Ibid.*, at 1312. [6] *Ibid.*, at 1308.

[7] *Honolulu Star-Bulletin*, January 19, 1946. It is not clear from the record whether all three of the employer parties to the dispute agreed upon conciliation; certainly the Shell Oil Company and Local 904 did so. Miscellaneous papers in files of the Hawaii Employment Relations Board.

[8] Miscellaneous papers in files of the Hawaii Employment Relations Board. The record does not show whether the conciliator directed his efforts exclusively to the settlement of the questions of wages and hours of work, or whether he also endeavored to mediate the question of the alleged refusal of the companies to bargain collectively—the central issue when the case finally got to the NLRB.

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right to respect picket lines," [9] which was the nub of the union's allegation of refusal to bargain. The Board's regional director in Honolulu on July 12, 1946 issued a consolidated complaint against the three oil companies.[10] Hearings before a trial examiner were held in Honolulu between August 7 and October 4, 1946.[11] On March 5, 1947, the trial examiner filed his intermediate report finding respondents guilty of unfair labor practices in violation of the statute.[12]

The union's charge of refusal to bargain rested chiefly upon the unwillingness of the companies to agree to any contracts which did not contain waivers of the employees' right to respect picket lines. That unwillingness, the union asserted, amounted to a refusal to bargain collectively within the meaning of the Wagner Act. The union, on its part, was unwilling to sign any contract which *did* incorporate such waivers. The "waiver" language upon which the companies insisted was that of what have come to be known in Hawaii as "the three clauses", commonly earmarked, respectively, the no-strikes-or-lockouts clause, the no-discrimination clause and the discharge clause.[13]

[9] 77 NLRB, at 1308 (1948).

[10] *Ibid.*, at 1311 (Intermediate Report).

[11] *Ibid.*, at 1313.

[12] *Ibid.*, at 1353 *et seq.*

[13] The texts of "the three clauses", which at this writing, as will be noted more in detail below, are still widely prevalent in Hawaiian labor contracts, appear in the Intermediate Report, 77 NLRB, at 1316. In some cases, according to the Intermediate Report, a clause commonly referred to as the "Loper clause", reading as follows, was inserted in contracts in place of the no-strikes-or-lockouts clause:

"However, if the Union, after having been recognized or certified as the collective bargaining agent for the employees of an employer (other than the Employer), shall become involved in a bona fide labor dispute with such other employer concerning the wages, hours or other conditions of employment of such employees, and shall establish a picket line, which is not in contravention of any law or agreement, around the business establishment of such other employer, then and in such event the employees covered hereby, if they are ordered by the Employer to cross such picket line * may decline to do so. In such case [the Discrimination and Discharge Sections] insofar as they concern the right of the Employer to discharge such employees for such cause, shall become inoperative as applied to such employees and the first paragraph of this section shall be suspended until the removal of such picket line. Meanwhile the parties shall have and may exercise all rights which at law or under this contract they would have if the first paragraph of this section had not been included in this agreement.

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They run as follows:

No Strikes or Lockouts

The parties hereto agree that during the term of this agreement any past, existing, or future custom or practice of the Employer or the Union to the contrary notwithstanding, there shall be no lockout by the Employer, nor any strike, sit-down, refusal to work, stoppage of work, slow-down, retardation of production or picketing of the Employer on the part of the Union or its representatives or on the part of any employee covered by the terms of this agreement.

No Discrimination

The Employer will not discriminate against any employee because of his membership in the Union or for legitimate union activities; provided, however, that such activity shall not interfere with Employer's operations, and must not be conducted during working hours unless expressly provided for in this agreement.

The Union agrees for itself and its members that neither it, its representatives or members will attempt to intimidate or coerce any employee of the Employer for the purpose of compelling such employee to join the Union.

Discharge

Employees shall be subject to discharge by Employer for insubordination, pilferage, drunkenness, incompetence or failure to perform the work as required or for failure to observe safety rules and regulations and Employer's house rules which shall be conspicuously posted. Any discharged employee shall, upon request, be furnished the reason for his discharge in writing. Probationary and temporary employees may be summarily discharged.

At the time of the beginning of the negotiations between Teamsters' Local 904 and the three oil companies the "three clauses" evidently had had but a brief history. According to the Intermediate Report the first Hawaiian contract to utilize the idea of the "three clauses" was one executed in the spring

"* Orders to cross such picket lines must be evidenced in writing over the signature of an authorized management representative."

The foregoing "Loper clause" is set out in the Intermediate Report, 77 NLRB, at 1320.

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of 1944, less than a year after the launching of the Hawaii Employers' Council, by and between Theo. H. Davies and Company, Ltd., and Local 996 of the Teamsters' Union. That contract contained two of the "three clauses".[14] Evidently the first contract to incorporate all "three clauses" was one negotiated, a few weeks after the Davies agreement, between the same local and the Honolulu Construction and Draying Company, Ltd. The Intermediate Report states that the Council represented the employers in the negotiation of both the Davies and the H. C. and D. contracts.[15] After the execution of the H. C. and D. contract, the company discharged six employees who had refused to cross a picket line established by Local 996 at the Davies plant. The union took the discharges to arbitration under the terms of the contract and, in October 1945, while the Shell negotiations were in progress, the arbitrators handed down an award "finding that the employer was within its rights because of the inclusion [in the H. C. and D. contract] . . . of the 'discharge clause,' in discharging [the] six employees. . . ." [16]

The award was a unanimous one, concurred in by the labor member of the tripartite, three-man board—an official of a local of the Typographical Union in Hawaii. The chairman was Judge J. Frank McLaughlin, a judge of the federal district court in Hawaii. The award pointed out that the union had conceded "that the men failed to carry out company orders . . ." but insisted "that the refusals of the men to perform work as directed . . . was legitimate concerted activity for the aid and protection of the union members." [17] "It would seem to be a correct assumption", said the board of arbitration, "that in the absence of a contract provision controlling the matter, refusal to . . . cross a picket line would be . . . safeguarded by law as legitimate

[14] 77 NLRB, at 1316 (Intermediate Report).

[15] 77 NLRB, at 1316-1317.

[16] 77 NLRB, at 1321 (Intermediate Report). The text of the award is published in 1 *Amer. Lab. Arb. Awards*, par. 67,359.

[17] Honolulu Construction and Draying Co., Ltd., *and* Teamsters, Chauffeurs, Warehousemen and Helpers' Union, Local 996 [Oct. 10, 1945], 1 *Amer. Labor Arb. Awards*, p. 67,824.

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concerted union activity for mutual aid or protection." [18] "This has been a difficult case," they concluded, "not for us but for the parties—as it may have an acute bearing upon future employer-employee relations." [19]

Confirmation of the arbitrators' prediction was not long in coming. The Intermediate Report in *Shell* commented as follows on the arbitration award in the *H. C. and D.* case and its sequel:

> After the rendition of the arbitrators' decision, which clearly pointed out that the employees of H. C. and D. had surrendered certain rights guaranteed under the [Wagner] Act, the Council forced its members to insist that the three clauses or at least the Loper clause and the Council's "no-discrimination" and "discharge" clauses be included in all collective bargaining contracts.[20]

The trial examiner then found that

> The Council . . . concealed from its members . . . and the public . . . that what . . . [it] really meant by "maintaining industrial stability" was the insistence that before any collective bargaining contract was entered into by any employer, the employees had to forfeit certain rights guaranteed by the Act and to agree to refuse to cross a picket line, whether it was established by their own union or not. In short, the employees had to agree not to engage in certain permissible concerted activities.[21]

Consonant with this finding he recommended that the Council cease and desist from "advising, urging, or otherwise influencing employers, directly or indirectly, to conform to the Council's policy of requiring as a *condition precedent* to the execution of a collective bargaining contract the inclusion of any clause which would have the effect of depriving employees of rights guaranteed by the Act"; [22] and that the three oil com-

[18] *Ibid.* In this case there was a "contract provision controlling the matter" and the activities, the arbitrators found, took place on company time and interfered with its operations.

[19] 1 *Amer. Labor Arb. Awards*, p. 67,825.

[20] 77 NLRB, at 1321.

[21] *Ibid.*, at 1349.

[22] *Ibid.*, at 1356. Emphasis supplied.

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panies cease and desist (a) from refusing to bargain collectively by following the cue of the Council in insisting upon incorporating the "three clauses" into their several contracts as a condition precedent to execution of them, and (b) from "In any manner contributing financial support to, . . . or soliciting the aid and assistance of, the Hawaii Employers' Council for the purpose of interfering with, restraining, or coercing their respective employees in the exercise of the rights guaranteed to them in Section 7 of the Act. . . ."

Some fifteen months after the submission of the Intermediate Report the National Labor Relations Board issued its decision in *Shell Oil*.[23] The Board disagreed with its trial examiner and dismissed the union's complaint.[24] The Board said:

> Unlike the Trial Examiner, we believe that the evidence is insufficient to establish that the Council used unlawful means in persuading the oil companies to insist upon the inclusion of the three clauses. Nor do we, in evaluating the good faith of the oil companies in attempting to conclude a satisfactory agreement, attach the same significance as did the trial examiner to the position taken by the oil companies with respect to the waiver [of the employees' right to respect picket lines]. . . . Upon the entire record, [the Board concluded] we find contrary to the trial examiner that the oil companies did not refuse to bargain collectively in good faith with . . . Local 904 . . . [but that] efforts were made by the parties to by-pass or compromise the basic conflict arising out of the waiver issue.[25]

[23] 77 NLRB 1306 (June 22, 1948). Between Intermediate Report and Board decision the Labor-Management Relations (Taft-Hartley) Act was passed. Public Law No. 101, 80th Cong., 1st Sess., June 23, 1947.

[24] 77 NLRB, at 1311. It is idle to speculate on whether consideration of the case by the three-man Wagner Act board before June 23, 1947 would have been as likely to dismiss the union's complaint as was the five-man board after that date.

[25] 77 NLRB, at 1308, 1309. Comment from one informed source at the time of issuance of the Intermediate Report anticipated a contrary decision. The Bureau of National Affairs said editorially about this case: "It is highly probable that the Board will sustain the conclusion of . . . its trial examiner . . . that employers may not *condition* their agreement to a contract upon the unions conceding to demands for inclusion of a no-strike clause. [To do so would amount to] . . . an 'ultimatum' demonstrating bad faith in bargaining. . . ." "Analysis of the Week's Significant Developments", March 24, 1947, 19 *Lab. Rel. Rep.*, No. 41, "Analysis", at 87.

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That these "efforts . . . to compromise the basic conflict" were crucial in the Board's thinking in this case seems evident from the official summary of its decision:

> Insistence by [the oil companies] . . . that contract include waiver of employees' right to strike or to respect picket lines established elsewhere *held* not violative of Section 8(f) where respondents did not use this issue with intention to bring about impasse and prevent consummation of bargaining agreement. Conditional agreement was reached on all matters but waiver of right to respect picket lines as a result of concessions on both sides; waiver issue was repeatedly considered in honest and frank discussions and respondents and union both made efforts to bypass or compromise basic conflict arising out of waiver issue; and union indicated willingness to accept waiver clause[s] in return for closed-shop contract and further wage adjustment.[26]

Thus, the Board held that where there is no intent, by insistence on the waiver, to bring on an impasse, there is no violation. An impasse reached despite good-faith efforts to avoid it imports no violation. The examiner in *Shell* no doubt would have agreed on these conclusions if he could have subscribed to the Board's premise that, as a fact, there was no intent to bring on an impasse. The examiner evidently thought that there *was* such a purpose. The Board, it has been noted, did not "attach the same significance as did the Trial Examiner to the position taken by the oil companies." The Board's inferences from the evidence, in other words, were significantly different from those drawn from it by the examiner. Both sets of inferences seem reasonable. Those of the Board, of course, prevail. The question is, which inferences come nearer to reflection of the real intent of the companies? Perhaps the answer is unknowable. On the one hand it may be argued that the Board's insights in the case are more sound, since they rest, at least in theory, on the pooled judgments of five men, whereas the examiner stood

[26] 4 *Digest . . . of Decisions of the National Labor Relations Board* (1952), at 897. In a case decided a few months later under Taft-Hartley the Board concluded that "In the light of these numerous conferences which resulted in give and take adjustments on almost all points . . ." employer's demand that the union agree to a no-strike clause did not constitute refusal to bargain in good faith. *Burns Brick Co.*, 80 NLRB, No. 85, 1948.

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alone. On the other hand, the examiner saw and heard the witnesses and was exposed to the controversy where it arose, whereas the Board was five thousand miles from the peculiarly remote scene of the conflict, heard oral argument only and saw no witnesses.

Before the 1947 amendments to the Wagner Act the NLRB had come to hold, in effect, that strikes in defiance of board certifications were unfair labor practices, and that the strikers in such situations might be discharged without entitlement to reinstatement or back pay.[27] It is not clear whether discharge for refusal to cross the picket lines set up by such strikers was an unfair labor practice. Presumably it was not. But evidently discharge for refusal to cross a picket line set up in connection with a strike ratified or approved by a certified union *was* an unfair labor practice, at least in the absence of some such contractual waiver of the right to cross, as was involved in *Shell*. The waivers in that case, it should be noted, were so formulated that they fell short of full surrender of the right to respect picket lines. That right evidently was unimpaired except during working hours or while the employee was on duty. While on the job the employees covered by the Shell Oil contracts were bound by the promises made by their bargaining representatives that they would refrain from exercising certain of the rights to engage in concerted activities conferred by the Wagner Act. It does not appear that the strike in the *Honolulu Construction and Draying* case was either wild-cat or in defiance of any board certification. The respecting of the strikers' picket lines, therefore, if done in concert and for mutual aid or protection, was permissible, and discharge for it an unfair labor practice—*unless* it was done during working hours and in the context of a contractual undertaking, in the language of *Shell*, " to perform the work as required ". In the *H. C. and D.* case the refusal to cross picket lines *did* take place while the employees were on duty and while they were bound by the terms of the " three clauses " in their contract. Even assuming (what was left unclear in the *H. C. and D.* case) that the refusals to

[27] See *Thompson Products, Inc.* (1947), 72 NLRB, No. 150.

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cross as a matter of fact were concerted, and were for " the purpose of collective bargaining or other mutual aid or protection," such refusals during working hours were impermissible and were reasonably punishable by discharge in view of the contractual promise " to perform the work as required ".[28] This was the unanimous conclusion of the board of arbitrators, which found the company blameless in discharging the employees for respecting the Davies picket line in the circumstances just described. Presumably, if the matter had been brought before the NLRB by way of a union charge of unfair labor practice in discharging the men, the Board would have dismissed the complaint. At any rate, in *Shell* it did dismiss the complaint that the companies had refused to bargain collectively when they insisted on inclusion of the " three clauses " in the contracts.

The Wagner Act, under the provisions of which *Shell Oil* was considered by the trial examiner and decided by the National Labor Relations Board, contained no reference to the crossing of picket lines. Taft-Hartley, however, qualifies and limits the new subsection 8(b) which enumerates and describes the unfair labor practices of labor organizations or their agents, by a significant " picket-line proviso ", which runs,

> . . . nothing contained in this sub-section (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act. . . .[29]

[28] It seems clear from the Intermediate Report that the union understood that the language of the " three clauses " was construed by the companies as authorizing them, *inter alia*, " to discharge any employee who [while on the job] refused to cross a picket line." 77 NLRB, at 1331. It may be argued, with some plausibility, that it is an implicit condition of employment for *all* employees that they agree " to perform the work as required ". But in view of the protection now given to " concerted activities ", it is, perhaps, more realistic to assume that there is no bar to the refusal, even on the job, to cross picket lines set up by duly certified bargaining agents—*unless* there is a contractual waiver.

[29] Labor-Management Relations Act, 1947 (Public Law 101, 80th Cong., 1st Sess.), Sec. 8(b). Although the proviso is said to modify " this sub-section (b) " it is printed as an integral part of paragraph (4) of that subsection.

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The purport of this proviso appears to be substantially the same as that of the "Loper clause" which, as noted, was sometimes accepted by Hawaiian employers in lieu of the "no-strikes-or-lockouts clause".[30] This substitute clause, the Board noted in its decision, "was something less [stringent] than the waiver in the original three clauses and something more [stringent] than" what the union wanted,[31] which was unqualified freedom to respect picket lines. Both the "picket-line proviso" of subsection 8(b) of Taft-Hartley and the Hawaiian "Loper clause", formulated some months earlier than the statute, were compromises.

As noted, the trial examiner recommended that the Hawaii Employers' Council "cease and desist from . . . advising, urging, or otherwise influencing employers, directly or indirectly, to conform to the Council's policy of requiring as a condition precedent to the execution of a collective bargaining contract the inclusion of any clause which would have the effect of depriving employees of rights guaranteed by the Act."[32] Unless the Council's methods of exercising influence or the employers' methods of "requiring [the waiver] as a condition precedent" are coercive, or otherwise unlawful, or unless they act in bad faith, it is difficult to see justification for acceptance of such a recommendation. One of the rights guaranteed by the Wagner-Taft-Hartley legislation is the right to strike. It is, generally, a protected concerted activity. But contractually-agreed-upon waivers of that right (and the right to lock out) are numerous. They "have the effect of depriving employees of [the limited] rights [to strike and lock out] guaranteed by the Act."[33] Such waivers, evidently, are neither invalid nor

[30] See *supra*, note 13.

[31] 77 NLRB, at 1309.

[32] *Ibid.*, at 1356. Significantly, one of the "three clauses", the "no-strikes-or-lockouts" clause, also has the effect of depriving *employers* of their long-conceded right to lock out, which the Taft-Hartley Act restricts, in Section 8(d), only with respect to a sixty-day period prior to contract expiration. Employees, in sanctioning agreement by their bargaining agent to the incorporation of a no-strike clause in their contracts, relinquish (or "deprive" themselves of) a right guaranteed to them by the Act.

[33] The Taft-Hartley Act does not *explicitly* guarantee to the employer the right to lock out but the limitation in its Section 8(d)(4) of that right implies recognition of its existence.

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inequitable. Employers' associations, moreover, like the Hawaiian Council may, and probably often do, influence their employer members to require "as a condition precedent to the execution of a collective bargaining contract" the incorporation of a no-strike clause. Some contracts even incorporate waivers of the right to picket the employer. Nor is the union the only party known to consent to waivers to its possible detriment. Employers agree with unions that they will not lock out the latter's members; they even sign contractual waivers of their otherwise unquestioned right to move their plants from one location to another.[34] In one such case the collective bargaining contract, entered into in 1936, the year following the enactment of the Wagner Act, contained waivers of (1) the right of the employer members of the Popular Priced Dress Manufacturers' Association to lock out their employees and (2) the right of the employees to strike. The same contract incorporated a stringent limitation upon the employers' right to move their plants. The limiting clause read as follows: "No [employer] member of the association shall, during the term of this agreement, move his shop or factory from its present location to any place beyond which the public carrier fare is more than 5 cents."[35] One member-employer, so to say, "pulled an H. C. and D. in reverse" and moved its plant from New York to a new site in Pennsylvania. The union (the International Ladies Garment Workers) sued in the New York courts and the employer—the Blue Dale Dress Company—was ordered by the court to move back to New York.[36]

The trial examiner in *Shell* took the position that it was a violation of the mandatory bargaining provisions of the law for the employers to require, and for the Council to urge them to require, "as a condition precedent to the execution of a . . . contract the inclusion of any clause which would have the effect of depriving employees of rights guaranteed by the Act,"

[34] See, e.g., *Dubinsky v. Blue Dale Dress Co., Inc.*, 162 Misc. 177, 292 N. Y. S. 898 (1936).

[35] The clause is reproduced in the court's decision in the Blue Dale case, note 34, *supra*.

[36] Case cited in note 34, *supra*.

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specifically in this case the "right" to refuse to cross a picket line. Assessment of this proposition necessitates recognition of just what is meant by the duty to bargain which the Wagner-Taft-Hartley Law places upon employers. It seems clear that it is a duty to engage in collective bargaining in good faith—but not necessarily to agree to any particular clause or clauses. The law compels bargaining. It does not compel agreement. In 1935 the Senate Committee on Education and Labor said in regard to the bill (S. 1958) which was to become the Wagner Act: "The committee wishes to dispel any possible false impression that this bill is designed to compel the making of agreements or to permit governmental supervision of their terms." [37] In 1947, when the amendments which were to become the Taft-Hartley Act were under consideration, apprehension was expressed in the Congress that the NLRB "has gone very far, in . . . determining whether or not employers had bargained in good faith, in setting itself up as the judge of what concessions an employer must make and of the proposals . . . that he may or may not make." [38] The result was Section 8(d) of Taft-Hartley, as to the implications of which the Supreme Court said in a recent case,

> it is now apparent from the statute itself that the Act does not encourage a party to engage in marathon discussions at the expense of a frank statement . . . of his position . . . [and] that the Board may not, either directly or indirectly, compel concessions or otherwise sit in judgment upon the substantive terms of collective bargaining agreements.[39]

What, if anything, is agreed to is determined by strategic factors of bargaining power, conditioned by the temperament and ethical standards of the parties. If there is no obligation to agree to any particular clause or clauses, there is no obligation—on the part of either the union or the employer—to take on a contract at all. In other words, the employer—or the union—if the rejection is in good faith, may reject the proposed con-

[37] S. Rep. 573, 74th Cong., 1st Sess., p. 12.

[38] H. Rep. 245, 80th Cong., 1st Sess., p. 19.

[39] *NLRB v. American National Ins. Co.* (case cited in note 42, *infra*).

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tract, lock, stock and barrel, without violation of Wagner-Taft-Hartley.

The trial examiner appears to go along with this thinking as long as the rejection of a contract is not the result of the refusal of the other party to accept a particular clause, or clauses—in *Shell*, "the three clauses". In *Shell* the employers said: "If you don't take the 'three clauses' we'll sign no contract." Such a statement—ultimatum, if you will—may be made in good faith. If it is made in good faith, how can it be violative of a law which requires only good-faith bargaining and does not require agreement? So, if there is good faith, it seems clear that the employers may legitimately insist upon the three clauses as a condition precedent to a contract. Of course, they do it at their peril. They run the risk of strike. Short of strike, they may run the risk of undermining whatever *entente cordiale* may have been built up in the industry. However, the policy of preventing a party from making acceptance of a particular clause a condition precedent to a contract may well have long-run bad effects on morale because it surely spells governmental dictation to the parties as to what shall, or shall not, be bargained into contracts. If the NLRB gradually should construe Wagner-Taft-Hartley as having legislated that policy, it would be making the law-in-action into something significantly different from the law-on-the-books. In dismissing the complaint against the three companies the Board cannot be assumed to have rejected the theory of the trial examiner as to what is implied in the law's imposition of the "duty to bargain" upon employers. It said:

> Unlike the Trial Examiner, we believe that the evidence is insufficient to establish that the Council used unlawful means in persuading the oil companies to insist on the inclusion of the three clauses. Nor do we, in evaluating the good faith of the oil companies in attempting to conclude a satisfactory agreement, attach the same significance as did the Trial Examiner to the position taken by the oil companies with respect to the . . . issue [of waiver of right to respect picket lines] arising out of the inclusion of the three clauses.[40]

[40] Matter of Shell Oil Company and Hawaii Employers' Council, 77 NLRB 1308 (June 22, 1948).

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There is evidence that, despite its dismissal of the complaint in *Shell*, the NLRB leans to the view (which seems implicit in the Intermediate Report in that case) that Wagner-Taft-Hartley must be construed to mean not only that the parties are under duty to bargain, but that they are—or, at least, the employer party is—under a duty to refrain from insisting that particular clauses must be accepted as conditions precedent to any contract.[41] In a case decided two years after *Shell* the NLRB decided that an employer refused to bargain by conditioning the conclusion of any contract on the union's acceptance of the employer's so-called management prerogative clause whereby the employer sought to reserve to itself the exclusive right to determine unilaterally certain terms and conditions of employment which are proper subjects for collective bargaining.[42]

The position of Hawaiian employers vis-à-vis the "three clauses" seems to be legally unassailable. It is consonant, moreover, with the view, already referred to, that what the Wagner-

[41] It may be that the Board does not postulate a duty so to refrain, irrespective of the *character* of the particular clause. Perhaps neither the Board nor the trial examiner considers that there is any duty to refrain from insisting upon acceptance of particular clauses as conditions precedent *unless* the clause, in the words of the trial examiner, "would have the effect of depriving employees of rights guaranteed by the Act." Even on this footing, employers would not be at liberty to insist upon acceptance of a no-strike clause as a condition precedent.

[42] *In re American National Insurance Co.* and *Office Employees International Union*, Case No. 39-CA-33, April 5, 1950, 89 NLRB, No. 19, 25 LRRM 1532. The part of the Board's order referred to in the text was refused enforcement by the U. S. Court of Appeals (*Amer. Nat'l. Ins. Co. v. NLRB*, C. A. 5th Cir., February 23, 1951, 27 LRRM 2405) and this partial refusal to enforce was affirmed by the United States Supreme Court (20 *Law Week* 4358, May 27, 1952), which said: "The Act does not compel any agreement whatsoever . . . [n]or does . . . [it] regulate the substantive terms . . . which are incorporated in an agreement." *Ibid.*, p. 4360. Three justices, dissenting, supported the Board's position. Writing for them, Justice Minton said: ". . . where, as here, the employer tells the union that the only way to obtain a contract as to wages is to agree not to bargain about certain other working conditions the employer has refused to bargain about those other working conditions." 20 *Law Week* 4363. See also *New York Times*, May 27, 1952. And see "The Employer's Duty to Bargain", by S. Petro, 3 *Lab. L. J.* 515 (August 1952). Whether the dissenters, confronted with *Shell*, would say, "Where the employer tells the union that the only way to obtain a contract is to agree to the inclusion of the 'three clauses' desired by him the employer has refused to bargain, despite the fact that he did bargain about the three clauses, as well as other issues," is a question.

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Taft-Hartley legislation does is simply to compel collective *bargaining* and that it does not compel *agreement*. In the light of the historical background of the Act and of Congressional comments on the law's objectives ("It leads the employer to the door of the conference room and says to him: 'Here are the representatives of your employees. Bargain with them.'") it seems fair to suggest that it does not compel even the measure of agreement involved in an employer's consent to a contract despite the refusal of a union to accept a clause which the employer considers crucially important. Any lingering doubts on this score would seem to be set at rest by the provision added by Section 8(d) of the 1947 amendments, to the effect that the obligation to bargain collectively "does not compel either party to agree to a proposal or require the making of a concession." It may be that, as a matter of policy, the law *should* so compel the parties. But it must be recognized that if it did so it would bring government into the bargaining process with a vengeance. Whatever advantages might inhere in a policy of combined compulsory bargaining (which we have) *and* compulsory agreement (which the law on the books says we have not) it would lack important advantages inherent in our system of free collective bargaining.

From the point of view of industrial morale and harmonious labor relations the position of the employers may be vulnerable, especially where the employers not only press hard for the acceptance of the clauses *as is*, but also make agreement to them the *sine qua non* to the signing of any contract whatever. This view of the matter is not greatly different from that taken by A. L. Wills, the NLRB officer in charge in Hawaii.[43] Mr. Wills was in substantial agreement with the trial examiner in *Shell*. In a speech in Honolulu in September 1950, he said:

> Put bluntly . . . [the position of organized employers in Hawaii] in its more extreme form is simply this: Give up the more effective rights to concerted activity for your mutual aid and protection or you get no contract—no increase in wages—no im-

[43] The views of Mr. Wills, set out in the text, are not to be attributed to the National Labor Relations Board, or to him as a member of its staff. They are simply his personal opinions.

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proved working conditions. The restrictive clauses I refer to have become famous under the name of "the Three Clauses," which were the subject of litigation in . . . *Shell Oil*. . . . The attempt was made [there] to outlaw the Three Clauses or at least to outlaw . . . insistence [upon them] as a condition precedent to contract. *We got licked.* The National Labor Relations Board reversed the trial examiner on every count. . . .

I can truthfully state that I know of no single item which in the last few years has caused so much bitterness and hostility and frustration among labor leaders and among unionized employees in general as employer insistence that these Three Clauses go into every contract. I believe such insistence to be detrimental to our community since they penalize those unions which believe contracts are sacred and honestly strive to negotiate contracts they can live with and honor. They mean nothing to people who believe a contract is a scrap of paper—a truce in a Class War. These contracts are an open invitation to labor to sign with tongue in cheek and to adopt the cynical attitude of the Apostles of Hate.

Lastly, they just don't work. Employers' Council figures indicate that there have been approximately forty contract violations in the form of strikes, walkouts, or quickies . . . since January 1, 1950. Probably nearly ten thousand employees were involved in these walkouts. Aside from the attitude that a contract is only a truce in a Class War, *there will always be men who will refuse to cross a picket line when their best manly instincts tell them it is dishonorable and disreputable to help break a worthy strike.*[44]

It is understandable that employers should consider it important that their business operations should not be unnecessarily interrupted. Whether the interruptions occasioned by refusal of employees to cross picket lines are "necessary" is a question which turns on value judgments. To most union men the interruption of operations resulting from refusal to cross picket lines is justified, because support of picketing fellow-

[44] "Growing up in Labor-Management Relations", address by Arnold L. Wills, Officer in Charge, NLRB, Honolulu, T. H., before the Honolulu Rotary Club, September 12, 1950, Niumalu Hotel. Italics as in the original mimeographed transcript. A summary of Mr. Wills's speech, including quotation, *inter alia*, of some of the excerpts set out here in the text, appeared in the *Honolulu Star-Bulletin* of September 13, 1950.

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unionists seems to them more important than the production foregone. To most employers, on the contrary, the lost production is more important. Which view is "right" may turn on the merits of the dispute which the picketing union has with the employer.[45] If the picketing union is one which (a) has been defeated in a collective-bargaining election, (b) is endeavoring to retaliate against a rival, certified union, (c) has no members in the employ of the employer, or (d) is picketing with the object of inducing the employer to violate the law, it would seem highly unreasonable to argue that (in the context of contractual agreement "to perform the work as required") on-the-job refusal to cross that picket line is justified, despite the fact that such refusal interferes with the employer's operations. So, modification of the stereotyped language of the "three clauses" would seem in order. One such modification, the "Loper clause", has been introduced in some Hawaiian contracts. A similar one might follow the language of the "picket-line proviso" in Section 8(b) of the Taft-Hartley Act. This latter expedient would mean contractual agreement to allow without penalty refusals to cross picket lines where the pickets represent a union whose member-employees, in the words of the statute, "are engaged in a strike ratified or approved by a representative of such employees whom such employer is required [by law] to recognize. . . ." This sort of modification of the "three clauses", this writer thinks, would be more equitable and more workable than the unmodified language of those clauses. It would also be superior to the flat contractual condonation of all picket-line crossing sometimes favored by unions and, perhaps, superior to the contractual condonation, set out below, of the crossing of "a legitimate and bona fide picket line", incorporated in the current Pacific Coast Longshore Agreement.

[45] In an administrative determination the NLRB General Counsel has sustained one of the Board's regional directors in refusing to issue a complaint alleging that the employer violated the Act by interrogating employees concerning their willingness to cross the picket line of another union and by laying off employees who refused to cross the picket line. He ruled that an employer may properly insist that his employees may not be "on strike and at work simultaneously" and may lawfully compel them to elect which of these two alternatives they will follow. Administrative Ruling No. 152, 28 *Lab. Rel. Ref. Man.* 1400, 1401, August 10, 1951.

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> Refusal to cross a legitimate and bona fide picket line as defined in this paragraph shall not be deemed a violation of this Agreement. Such a picket line is one established and maintained by a union, acting independently of the ILWU longshore local unions, about the premises of an employer with whom it is engaged in a bona fide dispute over wages, hours or working conditions of employees, a majority of whom it represents as the collective bargaining agency. Collusive picket lines, jurisdictional picket lines, hot cargo picket lines, secondary boycott picket lines, and demonstration picket lines are not legitimate and bona fide picket lines within the meaning of this Agreement.[46]

The problem of the crossing of picket lines emerged again in the year after the NLRB decision in *Shell*, in connection with the Hawaiian dock strike developments of 1949. In its "Complaint for Injunction" in the important Hawaiian case of *ILWU v. Tsukiyama*, the ILWU stressed the fact "that in accordance with the rights given by the Labor-Management Relations Act of 1947, the picket lines of plaintiff union were respected by other unions. . . ."[47]

The "three clauses" continue to be widely included in collective bargaining agreements in Hawaii. Indeed, it appears that most such contracts in the Territory incorporate them. In 1950, out of 150 labor agreements, 115 barred failure to perform work as required, while 135 incorporated the "no-discrimination clause".[48] The agreement currently in effect be-

[46] The language quoted is that of the first paragraph of Section 10(d), and appears on page F. of the Special Supplement to *The Dispatcher* for November 9, 1951, where the full text of the contract appears.

See the following recent NLRB cases involving refusal to cross picket lines: *Cyril de Cordova & Bro.*, 91 NLRB, No. 187 (Oct. 25, 1950); *NLRB v. Illinois Bell Telephone Company*, 189 F 2d 258, 28 LRRM 2079; cert. den., Nov. 26, 1951, 29 LRRM 2111; *Rockaway News Supply Co., Inc. and Newspaper and Mail Deliverers' Union*, 94 NLRB 1056 (1951); enf. den., 197 F 2d 111 (CA2, May 12, 1952); cert. gr., Oct. 7, 1952.

[47] *Longshore and Allied Workers of Hawaii, ILWU v. Tsukiyama* [President of the territorial Senate], U. S. Dist. Ct. D. Haw. No. 930 (1949), Complaint for Injunction, etc., at 10 (Par. X). As a fact, the ILWU's picket lines were not respected by all "other unions".

[48] Hawaii Employers' Council. "Collective Bargaining Provisions in Hawaii" (mimeographed, June 1950), at 3, 36. The Hawaiian longshore agreements of 1948 contained at least two of the "three clauses". See Sections 13 and 14 of contract between Local 136 of ILWU and Mahukona Terminals, Ltd., reprinted in *Hawaiian*

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tween Shell Oil Company and the union which was involved in the *Shell* case of 1947-1948 contains the "three clauses" in substantially the form in which they first stirred controversy.[49]

However, if the future witnesses great shifts in bargaining power, the "three clauses" may yet be bargained out of labor agreements as, in 1946-1947, they were bargained in. More than that, Hawaiian unions may be able successfully to "insist", as a condition precedent to the execution of a contract, upon some such clause as the above-quoted provision in the Pacific Coast Longshore Agreement, 1951-1953, between the ILWU and the Pacific Maritime Association. At any rate, it is to be hoped that the Taft-Hartley Act will not be so construed and applied as by law to prevent either party in labor negotiations from good-faith insistence[50] that the other party accept, as a condition precedent to any contract, particular provisions (waivers of the right to strike, or lock out, or move the business, or honor picket lines, or what not) believed by the party proposing them to be important and desirable. On balance, the toleration of such good-faith insistence seems less fraught with trouble, and more consonant with the democratic ideal of free collective bargaining, than the prohibition of it. Such toleration, moreover, appears to have been what the Congress sought to assure.

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Labor Situation. Hearing before the Committee on Labor and Public Welfare, United States Senate, 81st Cong., 1st Sess., on S. 2216 . . . (1949), at 213.

[49] *Articles of agreement between Shell Oil Company and Gasoline and Oil Drivers, Warehousemen and Helpers Union, Local 904 (AFL), Iwilei Plant* [Oahu, Hawaii], April 1, 1950 (pamphlet), Articles XII, XIII and XIV

[50] In *Shell*, as noted, the Board believed that the insistence was in good faith; the examiner thought it designed in bad faith to create an impasse.

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THE LYNSKEY TRIBUNAL: THE BRITISH METHOD OF DEALING WITH POLITICAL CORRUPTION

IN the winter of 1948, a sensational investigation of governmental corruption took place in England. Rumors of corruption in high places had for some time been rife. On the 27th of October, when Prime Minister Attlee moved in the House of Commons that a tribunal be set up to inquire whether there was any justification for allegations reflecting on the official conduct of Ministers of the Crown and other public servants, England was all agog. During the sittings of the Tribunal, public interest was widespread and press coverage extensive. Even though space was at a premium, because of the newsprint shortage, the London *Times* devoted column upon column to an almost verbatim report of the proceedings; the less dignified papers went in for " sob story " coverage and lurid headlines. To Americans, accustomed to the hullabaloo attendant on frequent sensational trials and Congressional committee hearings, the clamor and outcry in England may seem to be of no special significance. It may, however, be not without interest to note how the English reacted to indications of corruption, what procedures they used to establish the facts without sacrificing the basic common-law rights of individuals, and what actions were taken once the facts were established. The government acted swiftly, both in instituting proceedings and in bringing them to a conclusion. No attempt was made to derive partisan political advantage. Rather, all parties closed ranks in defense of the principle that " public administration in this country and public life in this country stand unrivaled in their high standards of service and incorruptibility." [1] As Winston Churchill put it, quoting from a speech by Clement Attlee in 1936, " any action of the nature of utilisation of a public posi-

[1] Speech by Clement Attlee, Feb. 3, 1949, in House of Commons, *H.C.Deb.*, vol. 460, col. 1852.

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tion for a private gain cuts at the root of democratic government." [2]

On the motion of Mr. Attlee in the Commons and of Viscount Jowitt, the Lord Chancellor, in the Lords it was resolved by both Houses of Parliament:

> that it is expedient that a Tribunal be established for inquiring into a definite matter of urgent public importance, that is to say, whether there is any justification of allegations that payments, rewards or other considerations have been sought, offered, promised, made or received by or to Ministers of the Crown or other public servants in connection with licenses or permissions required under any enactment, regulation or order or in connection with the withdrawal of any prosecution and, if so, in what circumstances the transactions took place and what persons were involved therein.[3]

The Home Secretary appointed Sir George Justin Lynskey, one of His Majesty's Judges of the High Court of Justice, Godfrey Russell Vick and Gerald Ritchie Upjohn, two of His Majesty's Counsel, to constitute the Tribunal. The Lynskey Tribunal, as it was known popularly because Sir George Lynskey had been appointed chairman, set up under the Tribunals of Inquiry (Evidence) Act of 1921 was "itself responsible for the collection of evidence, taking statements from witnesses, presenting their evidence, then testing its accuracy and finally finding the facts." [4] In view of the physical impossibility of doing the job themselves within a reasonable time, both the Treasury Solicitor and his staff, as well as that of the Metropolitan Police, were assigned to assist in the interviewing and the taking of statements from all persons who seemed to have useful information. Decision as to what further inquiries were needed, and which witnesses were to be called to give public testimony, remained the responsibility of the Tribunal, which also determined the procedures to be observed.

[2] Feb. 3, 1949, *ibid.*, col. 1859.

[3] *Report of the Tribunal appointed to inquire into allegations reflecting on the official conduct of Ministers of the Crown and other Public Servants*, Cmd. 7616, p. iv.

[4] *Ibid.*, p. 1.

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The speed with which the Tribunal acted may be seen by reference to the timetable of events. The accusations had been first brought to the attention of an official of the department concerned on the 26th of August, 1948. On the 24th of September, the Lord Chancellor wrote to the Minister accused for an explanation. A month later, the 27th of October, the original motion to set up the Tribunal was introduced and passed by Parliament. Two days later, on the 29th, J. Chuter Ede, the Home Secretary, appointed the members of the Tribunal, and on November 1 the Tribunal sat in public to discuss and decide questions of procedure. The actual hearings began two weeks later, on the 15th of November; they continued for twenty-five days, ending on December 21, 1948. The report of the Tribunal was published January 21, 1949, and accepted by the House of Commons February 3, 1949.

Although the Tribunal did not act as a court, in accordance with normal English judicial procedure the duties of legal assistance to the Tribunal were divided between counsel and solicitor. The Attorney General, Sir Hartley Shawcross, with three other barristers, acted as counsel; they were instructed by the Treasury Solicitor. Witnesses, also, were allowed to be represented by their own counsel and solicitor, provided the Tribunal thought they had a sufficient interest in matters under investigation to justify it. Of the sixty witnesses who testified (fifty-eight orally and two, for reasons of ill health, by affidavit) nineteen were thus represented. The right of witnesses to be examined by their own counsel after cross-examination by the Tribunal's counsel and the right of their counsel to cross-examine hostile witnesses are very significant differences from the procedure of our Congressional committees.

At the first sitting for the hearing of witnesses, the Attorney General outlined the procedure proposed by the Tribunal. The Attorney General was to open the facts. Witnesses were to be called and examined in chief on the statements they had made in preliminary interviews. Each witness was then to be cross-examined by the counsel who had examined him in chief; and counsel appearing for witnesses were to be given the opportunity of cross-examining. Any witness represented by counsel

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was then to be examined by his own counsel. The concluding stage was to be a final examination by a counsel for the Tribunal. Counsel for witnesses were asked to comment on this procedure, and it met with their approval.

The procedure of the Lynskey Tribunal, with its careful regard for the rights of individuals appearing before it, was in consonance with the principles expressed at the time the Act of 1921 was originally drafted, and repeated on subsequent occasions. As Mr. Neville Chamberlain stated at the time the tribunal form was used to investigate the budget leak (1936), "in a matter of this kind it was desirable that the inquiry should be undertaken by a body of a judicial character accustomed to weighing evidence, with a knowledge of the rules of evidence and free from any possible suspicion of partiality." [5]

The original bill for setting up a tribunal of inquiry had been introduced on March 4, 1921, by the then Attorney General, Sir Gordon Hewart, and had been supported by Mr. James Hope, Parliamentary Secretary of the Ministry of Munitions. It was offered in response to a request made in the House of Commons for an investigation of the Ministry of Munitions because of allegations that an official of the department had ordered the destruction of "working papers" and concealment of material documents from the Exchequer and Audit Department. At that time a large proportion of outstanding accounts with contractors were being dealt with, and rumors had been current that there had been corruption in certain government departments in the handling of great sums of money; it had even been suggested "that under the stress of war the old traditions of the Civil Service had been destroyed." [6] Existing methods of investigation were deemed unsatisfactory. For obvious reasons a departmental committee might be suspected of whitewashing if it found no support for the allegations. On the other hand, the subject under investigation was of too narrow a scope for the creation of a royal commission. Nor did a select committee of the Commons offer the answer. Apart from the need for special authority to compel the attendance of

[5] *H.C.Deb.*, vol. 311, col. 1346.

[6] *Ibid.*, vol. 138, col. 883.

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witnesses and the submission of documents (which the House undoubtedly would have granted), there was the question of the partisan character of committee membership which might lead to voting along party lines as has frequently been alleged was true of the Marconi case (1913). The government, therefore, had decided to set up a special Tribunal of Inquiry, but, instead of preparing a bill to deal with this one instance, it had brought in a general bill establishing a new procedure of investigation.

The bill was brought in by the government and its second reading moved after 11 P.M., March 7, 1921, with the understanding that it would go through all the stages that night. However, criticism was immediately directed against some of its provisions: it was objected that a tribunal could be set up without a resolution of the House, merely on the undertaking of a Minister of the Crown, and further that the rights of the witnesses summoned to appear before it were not sufficiently protected. To be sure, Sir Gordon Hewart had stated in his remarks on his motion for a second reading: "It is expressly provided that a witness before any such tribunal shall be entitled to protection as if he were a witness before a Superior Court of Justice. In other words, a witness is entitled to absolute privilege."[7] It was pointed out, however, that the bill allowed the tribunal to exclude the public from its hearings, to deny a witness the right to being represented by counsel, and to punish by imprisonment up to three months a witness who refused to appear or answer questions. Bonar Law, Leader of the House, was impatient of the criticism and stated that if there were opposition the government would withdraw the bill, because it was pressed for time and had only introduced it in response to the wishes expressed on all sides of the House. A compromise was arranged to allow a day for conference with the Attorney General on behalf of the objectors. On March 8 the bill was passed, with one amendment accepted by the government. A tribunal could not be set up without a resolution of one of the Houses and required the statement that the inquiry was a matter of urgent public importance. Introduced in the Lords on March

[7] *Ibid.*, vol. 139, col. 189.

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9, the bill met similar criticism with respect to the protection of the rights of individuals summoned to appear before the tribunal. The debate was longer, and the amendments were more drastic. For one thing, a resolution of both Houses was required to set up a tribunal. Secondly, if witnesses refused to appear, the tribunal could not punish them directly but had to apply to the High Court, which would hold a hearing on the question. Finally, the tribunal was not allowed to exclude the public from its sessions unless it decided it was in the public interest so to do. From the tenor of the discussion it was clear that this would be done only in a matter of the gravest importance in which secrecy were demanded for the public good. It was also clearly understood that, although the tribunal had the right to refuse representation by counsel to witnesses, it was the intent of the law to allow it except for unusual circumstances; as Sir Gordon Hewart said, " one can not conceive that the Tribunal would withhold such permission in a proper case. . . ." [8] These amendments of the Lords were in line with what the Commons had wanted and were therefore accepted by the House after several members arose to state that they were glad these matters had been discussed in the Second Chamber although " the House of Commons was supposed to look after the liberty of the subject." [9]

Anticlimactically, the first Tribunal, appointed to report on the alleged concealment of papers from the Exchequer and Audit Department by officials of the Ministry of Munitions, cleared these officials of the charges completely, to the satisfaction even of the original complainant. However, Britain now had a new procedure of investigation. A matter deemed of urgent public importance by both Houses could be investigated by a tribunal appointed by His Majesty or by a Secretary of State. The tribunal was to have " all such powers, rights, and privileges as are vested in the High Court, or, in Scotland the Court of Sessions " in respect to examining witnesses and compelling production of documents and a witness was entitled to the same immunities and privileges as if he were a witness be-

[8] *H.C.Deb.*, vol. 139, col. 2827.

[9] *Ibid.*, vol. 139, col. 2817.

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fore the High Court.[10] The judicial character of the tribunal tended to place it above the struggle of party politics so that its findings could be held to be nonpartisan. The careful regard for the rights of the individual expressed in both the Commons and the Lords and implemented by the Lords' amendments went far toward building up respect for the procedure and for the findings of the tribunals.

In all, between 1921 and 1948, the date of the Lynskey Tribunal, the tribunal of inquiry was invoked eleven times—the Lynskey Tribunal making the twelfth instance.[11] In every case the subject of the inquiry was a matter affecting some phase of government activity. The first was the investigation of charges against an official of the Ministry of Munitions; [12] the second, an inquiry into the actions of the Special Constabulary at Clones Junction when fired on by a unit of the Irish Republican Army.[13] In four other cases the police were concerned, whether the Metropolitan Police or the local constabulary.[14] One case involved the investigation of the loss of a submarine, the *Thetis;* [15] one, the question of drainage in Doncaster.[16] Four dealt with allegations of corruption, two on the local level,[17] and

[10] 11 & 12 Geo. 5, c. 7.

[11] Peter G. Richards mentions four instances of the use of the tribunal procedure in "Tribunals of Inquiry (Evidence) Act, 1921", *Public Administration*, vol. XXVII (1949), pp. 123-28.

[12] *Journals of the House of Commons*, 1921, p. 55 [hereafter referred to as *C.J.*].

[13] *Ibid.*, 1922, p. 27.

[14] (1) Inquiry into allegations made against certain officers of Metropolitan Police in connection with recent arrest of Major R. O. Sheppard, *C.J.*, 1924-25, p. 341.
(2) Inquiry into allegations made against Chief Constable of Kilmarnock in connection with dismissals from Burgh Police, *ibid.*, p. 415.
(3) Inquiry into complaints that have arisen between the Watch Committee of St. Helena and the Chief Constable of the Borough Police, *C.J.*, 1928, p. 30.
(4) Inquiry into the actions of the police in connection with their interrogation of Miss Savidge, *ibid.*, p. 181.

[15] *C.J.*, 1938-39, p. 273.

[16] *C.J.*, 1926, p. 194.

[17] (1) Inquiry into the letting and allocation of stands in the markets under the control of the Corporation of Glasgow, *C.J.*, 1932-33, p. 139.
(2) Inquiry into the administration by the Council of the City and County of Newcastle-upon-Tyne with respect to use of personnel, food, stores, for Fire, Police and Civil Defense Services, *C.J.*, 1944, p. 39.

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two on the national level; the latter were the budget leak in 1936 [18] and the Lynskey Tribunal.

On the whole the judicial character of the tribunal inspired public confidence. In two cases, however, further investigation was considered necessary. In one, in connection with the activities of the Metropolitan Police in their methods of interrogation of a woman, the famous Miss Savidge case, the Tribunal itself was not unanimous, turning in majority and minority reports. The chairman of the Tribunal had been a judge of the High Court. He was assisted by two members of Parliament drawn from the Government and the Opposition; the minority report was drawn up by the Opposition member.[19] In the sequel, a royal commission was appointed to inquire into police methods, a more general question. In the second instance also, a royal commission was set up to inquire into the broader aspects of the original point at issue.[20]

Interesting as a sidelight to the question of the validity of the tribunal procedure was the debate in the Commons in 1936 when the government proposed to investigate the budget leak. The Opposition was violently against its use. At that time Clement Attlee and Sir Stafford Cripps fought bitterly for the use of a select committee of the Commons. Member after member who had been in the House before World War I arose to recall the dissatisfaction produced by the Select Committee on the Marconi case, in which the findings were held to be determined by party lines.[21] Sir Francis Acland, in supporting the tribunal procedure, stated that the proposed inquiry ought to rest on five principles, namely, speed of getting to work, freedom from any sort of partiality, certainty that every material matter will be thoroughly and skillfully investigated, the greatest amount of publicity, and, lastly, the absence of any opportunity for anyone to make political capital out of the conduct of the investigation. Evidently the Tribunal on the budget

[18] *C.J.*, 1935-36, p. 207.

[19] Cmd. 3147; *H.C.Deb.*, vol. 217, cols. 1921 *et seq.*

[20] Inquiry into effect of the working of minerals on the existing system of land drainage in the Doncaster area, *H.C.Deb.*, July 2, 1926; f. n. 16, *supra*.

[21] *H.C.Deb.*, vol. 311, cols. 1561 *et seq.*

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leak satisfied these conditions; for, in the debate on the acceptance of its report, Attlee admitted handsomely that his opposition had been wrong, stating: "I should like frankly to acknowledge that the Inquiry could not, in my judgement, have been done better." [22]

Although the Tribunal had satisfied the objectives laid down by Sir Francis Acland and generally accepted by the House, there had been procedural difficulties that disturbed those who had participated. Again, the difficulties reflected concern for the rights of witnesses. In its report the Tribunal stated: "But the testing of the witnesses' stories by way of cross-examination or otherwise has necessarily been undertaken by members of the Tribunal themselves, with the resultant possibility of creating the impression that they were from the start hostile to some of the witnesses who appeared before them." [23] This was due to the fact that there was no prosecutor. Also, because there were no definite charges, the Tribunal reported that persons whose conduct was subject to the closest scrutiny were not represented by counsel before the Tribunal until some time had elapsed.

It was with these considerations in mind, that the Lynskey Tribunal devised its procedure and called upon the services of the Attorney General. Sir Hartley Shawcross declared "that although the Attorney General is a member of the Government he has certain duties which he cannot abdicate in connection with the administration of the law, especially the Criminal Law, and more particularly that branch of it which is concerned with the prevention of corruption" [24] and consented to serve as prosecutor to the Tribunal. A third criticism had been raised in regard to the inquiry into the budget leak. The Tribunal felt that witnesses' counsel had been hampered by their inability to object to reception of evidence in the form of hearsay evidence. The Lynskey Tribunal took this into account also. Recognizing that their first responsibility was to get at the facts, they did hear much evidence which "would not be admissible in the case of an individual witness in proceedings against him

[22] *H.C.Deb.*, vol. 313, col. 420.

[23] Cmd. 5184, p. 4.

[24] *Minutes of Evidence of the Lynskey Tribunal*, p. viii.

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or in litigation in which he was concerned." They stated, however, "in coming to a conclusion as to the conduct of any individual witness and in particular whether any allegation made in reference to him has been justified, we have had regard only to such evidence as would properly be admitted in a case in which he was a party and his conduct was in question." [25] In this way they were carrying out the intent of both the Government and the Opposition as expressed in the debate in the Commons. As Mr. Attlee said: "His Majesty's Government are, and always have been, most anxious that the fullest public investigation should be made at the earliest possible moment into any allegations reflecting on the purity of public administration. Democracy can not thrive in an atmosphere of suspicion and distrust." [26] At the same time he went on to say that the Act of 1921 expressly provided for the witness the same immunities and privileges as if he were a witness before the High Court and that he need not answer questions on grounds of self-incrimination. To this both Winston Churchill and Clement Davies acceded.

To what extent did the Lynskey Tribunal achieve its purposes: first, as to the investigation of the facts; secondly, as to the satisfactoriness of its procedures?

To an American who is merely familiar with the newspaper accounts of investigations into the affairs of corrupt American public officials and of some of the criminal trials that have followed, it seems surprising that so much excitement was aroused in England about so little. One is struck by the difference in the scale—in America mink coats have become symbolic, whereas in England it was the man's suit of clothes, a clue perhaps to the difference in emphasis in the two societies. But more important than the quantitative difference in the size of what euphemistically might be called gifts, is the difference in the reaction in the two countries to these revelations—perhaps a true index to the different standards of political morality in these countries.

The Lynskey Tribunal concluded that two public officials had

[25] Cmd. 7616, p. 3.

[26] *H.C.Deb.*, vol. 457, cols. 89-90.

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accepted gifts and hospitality knowing full well the purposes for which they had been given and had used their public position to further the interests of the donors. The Parliamentary Secretary for the Board of Trade, John Belcher, it was disclosed, had received three dozen bottles of wine and a little over a dozen bottles of whisky from a whisky distiller with whom he had become friendly. The distiller, Sir Maurice Bloch, was at that time trying to secure import licenses for sherry casks, hogsheads, and butts which were used for the storage and maturing of whisky. He had been having great difficulty in procuring these, and the Tribunal concluded that the gifts of sherry and whisky to Mr. Belcher were given with the hope of expediting these licenses. Mr. Belcher did get in touch, through his secretary, with the official in charge of granting such licenses, urging favorable action if it were proper to do so, and the licenses were issued. Mr. Belcher admitted that he had been indiscreet, and the Tribunal felt that he had accepted the liquor knowing the purpose for which it was intended and had intervened to expedite issue of the licenses.

More dramatic were the details disclosed of the relationship between Mr. Belcher and a Mr. Stanley. Sydney Stanley, an alien and an undischarged bankrupt, who had escaped deportation proceedings in 1933 by changing his name, appeared to be the evil genius of the whole affair. Rebecca West, who has done such distinguished reportorial work on the treason trials in recent years, used her powers of analysis and description to portray the dramatis personae at Church House and particularly the personality of Stanley.[27] He knew what he was doing, he was the personification of the contact man. With an elaborate apartment at Park Lane, which he had difficulty in paying for, he set out to meet members of the government, and was successful in impressing them with his importance. He entertained lavishly, and built up close personal relations with Belcher and others whom he then proceeded to exploit. Using his friendship or association with Belcher to convince his business associates he had influence with the government, he sought to sell his services as best he could. The details are fantastic

[27] *Harper's Magazine*, June and July 1949.

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but, as Sir Hartley Shawcross pointed out in his opening remarks, the pattern of his activities is somewhat characteristic of the ethos of modern business with its lavish expense accounts.

When Stanley could not " deliver " to one of his associates, he claimed he could not return large sums of money he had borrowed because he had used the money to pay off some government officials, including Belcher. That touched off the explosion. The persistent associate sought to bring pressure upon Belcher with the threat of possible publicity, and Belcher's secretary, being informed through another source that he, too, had been accused of being bribed by Stanley, reported the matter to an official of the department, and it was brought to the attention of the President of the Board of Trade. In the subsequent hearings, the secretary was completely cleared of any such imputation.

In the investigation, however, Stanley's associations with other government officials became known, and a second public official was tarred, Mr. George Gibson, a man who had been active in trade-union and Labor party circles for many years. He had served as general secretary of the Confederation of Health Service Employees, had been a member of the General Council of the Trade Union Congress and was chairman of the Trade Union Congress, 1940-41. In 1946, he had been made a Companion of Honour and appointed a director of the Bank of England. Stanley having made his acquaintance offered him the chairmanship of a proposed new company in order to get his assistance in obtaining permission from the Capital Issues Committee for a public issue of the shares of the new company. Gibson turned down the offer when he was appointed chairman of the North Western Electricity Board by the government. However, he did approach other government officials on Stanley's behalf. The Tribunal's finding was: " We are satisfied that Mr. Gibson did this in the hope of material advantage to himself although in fact all that he received apart from some trivial gifts [a dozen cigars, some three lbs. of sausage at Christmas and half a bottle of whisky] was the present of a suit of clothes." [28]

[28] Cmd. 7616, p. 81.

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In Belcher's case, too, all he had received from Stanley, apart from wining and dining, was a suit of clothes, a gold cigarette case, and the payment of his expenses for one week out of the two he had stayed with his family at a hotel in Margate during a Labour Party Conference. Mr. Stanley had invited Mr. and Mrs. Belcher to stay at his house, but when Belcher indicated they would have to bring the children because they had no one to stay with them, Stanley had arranged to put them up at a hotel instead.

Thus the Lynskey Tribunal after a searching investigation and exhaustive hearings had disclosed that two government officials had accepted gifts and used their official positions to secure help from government departments in expediting business for the donors. All other officials named were cleared.

What was the reaction to these revelations? What were the consequences?

A week before the adoption of the resolution by the House of Commons setting up the Lynskey Tribunal, Mr. Belcher had asked for a leave from his position as Parliamentary Secretary for the Board of Trade, and on the 15th of December, while the hearings were still being held, he sent in his resignation. On the 23rd of December, two days after the close of the hearings, George Gibson resigned his directorship in the Bank of England, retaining his chairmanship of the North Western Electricity Board; this, too, he gave up on the 26th of January.

The debate in the Commons on the acceptance of the Report of the Tribunal took place on February 3, 1949. It was prefaced by Belcher's request for the stewardship of the Chiltern Hundreds, a method of resigning from the House of Commons. He began his speech with an apology for his injudicious actions and indiscretions which, he acknowledged, reflected on the House. He ended on the note that he was not conscious of deviation from the paths of morality and rectitude. Yet the climate of opinion in the House was such that, although individual members expressed sympathy for the ordeal to which he had been put, there was an uncompromising insistence on the acceptance of the highest standards of political morality. As Mr. Attlee put it: " where any individual is highly placed, a finding

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that he has in any way departed from the highest standards involves a very heavy penalty . . . public administration in this country and public life in this country stand unrivalled in their high standards of service and incorruptibility." [29] This attitude was supported just as uncompromisingly by Churchill and other members of the House. No division along party lines took place. There was no attempt to make political capital out of the affair. Churchill fairly summarized the situation:

> Whatever differences we may have, there is no doubt that this House of Commons has shown itself most vigilant in matters affecting the honour of Members or Ministers in questions of breach of confidence or questions of breach of privilege, or in questions of the character which are now brought to our notice.[30]

This attitude was reflected throughout the country. As one Member of Parliament put it: "the majority of the British people were shocked to hear that these things could happen in connection with our Parliament and our Government. It is splendid to know they were shocked. I happen to know of other countries in which these things would not shock the public at all." [31]

The debate on the motion to accept the Report of the Lynskey Tribunal brought to the fore certain other questions. A constitutional question as to the relationship between the parliamentary secretary and the permanent secretary of a given department was clarified to the satisfaction of both sides of the House. Less easily solved was the problem whether increased controls over business by the government did not lead to the growth of contact men, who because of their greater knowledge of the regulations and acquaintanceship with government personnel sought to sell their services to business men and exert influence on officials. The Prime Minister promised further study of this aspect.[32] There remained, however, certain ques-

[29] *H.C.Deb.*, vol. 460, cols. 1850-52; the Lord Chancellor removed the name of Sir Maurice Bloch from the list of Justices of the Peace.

[30] *Ibid.*, vol. 457, col. 91.

[31] *Ibid.*, vol. 460, col. 1881.

[32] A Committee on Intermediaries, or contact men, was set up, Feb. 15, 1949; it reported in 1950, Cmd. 7904.

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tions, also somewhat difficult of solution, as to the Tribunal procedure itself.

Belcher in his statement to the House had criticized the procedure of the Tribunal on several counts. One was that it was not possible to know in advance the nature of the allegations and that much irrelevant material was brought in that was damaging to the reputations of the people involved because of the widespread and pitiless publicity given to the Tribunal by the press. He also bitterly resented the questions on domestic matters (mainly financial) put to his wife. On the other hand, some criticism was expressed in the House, after the Attorney General had stated that criminal action should not be taken because of the wide publicity the Tribunal had received and the nature of the evidence before it, that the whole question should have been turned over to the Public Prosecutor as a criminal case in the beginning.

It is true, as Mr. Attlee conceded, that exceptional publicity was given the Tribunal, and that unjustified slurs might have been cast on innocent, or not so innocent, persons by witnesses who appeared before it. Yet it was essential to get at the facts publicly, because of the widespread whispering and allegations of corruption in the public service. No alternative method seemed able to dispose of the question as efficiently. Witnesses were given the same absolute protection of their rights that they would have been assured of in a court of law, save that there was no appeal from the findings except to the House. It was true that it might be a nice question whether the officials might be considered guilty of a crime in the legal sense. It was also true that the public did not understand the difference between a trial and an inquiry. But on the other hand the rigorous code that demanded resignations from the two public officials against whom the Tribunal had found is the basis of the whole English code of public morality. It is toward this goal that the Douglas subcommittee on improvement of ethical standards in the American federal government was moving when it stated:

> It is argued that the leadership and prestige of the Congress depends upon its standards which it sets and maintains for its

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> Members both on and off the floor. Some of the testimony has urged the two Houses to take their disciplinary function seriously, and not to be content merely to allow any Member to sit, who, despite improper conduct, is not yet in jail.[33]

Significant, too, is this Committee's criticism of unfair and improper action of Congressional committees, and its urging that a form of procedure be adopted similar to the practices used by the tribunal of inquiry, in which individuals who may be under attack in a public hearing are given advance notice, so that they may be present and have the opportunity to cross-examine the witness. It concludes: " Experience has shown that such standards of fairness do not interfere with effective committee investigations, and it is particularly important that Congress, which is the popular branch of the government, should take the lead in respecting the rights of individuals and in securing the validity of its findings." [34]

The experience of the Lynskey Tribunal gives conclusive proof of the rightness of this position. No question of its impartiality or of the validity of its findings was raised in any quarter. It had conducted itself in a way that sought to give every witness seriously charged the fullest protection that a defendant would have under English law, the right of refusal to answer questions that would incriminate him,[35] the right to be represented by counsel which meant that his position could be skillfully clarified and that hostile witnesses could be cross-examined. Both Parliament and the press were convinced that a complete investigation had been made into the allegations and rumors that had been so widely whispered. The total result was a reaffirmation of the integrity of the British Civil Service and of the political morality of the members of Parliament.

MADELINE R. ROBINTON

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[33] Report of the subcommittee of the Committee on Labor and Public Welfare of the United States Senate, 82nd Cong., 1st Sess., 1951, p. 57.

[34] *Ibid.*, p. 56.

[35] Sir Hartley Shawcross revealed in the debate in the Commons on the acceptance of the Lynskey Report that no witness availed himself of this right before the Tribunal.

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CONTRIBUTORS TO THE MARCH ISSUE

PAUL F. BRISSENDEN, Professor of Economics, Graduate School of Business, Columbia University, recently returned from Puerto Rico, where he served as chairman of a tripartite industry committee holding wage hearings under the terms of the Fair Labor Standards Act. In 1950 he was a visiting professor at the University of Hawaii.

CHARLES R. NIXON is Assistant Professor of Political Science at the University of California, Los Angeles. He took his doctorate at Cornell University and taught at Smith College before going to California. His principal work is in the fields of political theory and politics.

E. PARMALEE PRENTICE, a member of the late firm of Murray, Prentice & Aldrich, was known for his publications on American constitutional law before he took up agriculture at Mount Hope Farm, Williamstown, Massachusetts. Among his books are: *Federal Power over Carriers and Corporations* (1907); *Farming for Famine* (1936); *Hunger and History* (1939); *American Dairy Cattle* (1942); *Food, War and the Future* (1944). He has been decorated by the Italian and Bulgarian governments for his services to the agriculture of those countries, and has been awarded honorary degrees by four colleges. His article on "Food for America, 1980—The Supply of Animal Proteins. The Agricultural Colleges" appeared in the December 1951 issue of the QUARTERLY.

MADELINE R. ROBINTON is Associate Professor of History at Brooklyn College. She is author of *An Introduction to the Papers of the New York Prize Court, 1861-1865.*

CLARENCE C. WALTON, Chairman of the Department of Political Science at the University of Scranton and Visiting Professor of Politics at Marywood College, has just returned from sixteen months of travel and study in Europe. He was a Penfield Fellow to the Institute for Advanced International Studies in Geneva, Switzerland, and is the author of *Kiderlen-Wächter and the Anglo-German Problem, 1910-1912* and many articles on contemporary international issues.

LUCIUS WILMERDING, JR., has written two important books on government—*Government by Merit* (1935), a study of the American civil service prepared for the Commission of Inquiry on Public Service Personnel, and *The Spending Power* (1943), a history of the efforts of Congress to control expenditures, based on researches made while in the Treasury Department, 1934-1941. His article on "Reform of the Electoral System" appeared in the March 1949 issue of the QUARTERLY, and "The President and the Law" in the September 1952 issue.

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Modern Nationalities: A Sociological Study. By FLORIAN ZNANIECKI. Urbana, The University of Illinois Press, 1952.—xvi, 196 pp. $3.95.

When one of the greatest living sociologists treats one of the central topics of our time, it is an event. When that event expresses itself in a closely argued text and a beautifully designed book, it is a pleasure as well.

Dr. Znaniecki's purpose is to correct what he believes to be an overemphasis on the political aspects of nationality. He disagrees not only with those political scientists who think that the only effective social unity is that of an organized state, but even with those sociologists who assume that the state, though not sufficient, is indispensable for the existence of a solidary, organized, modern society. This standpoint stems from the author's own experience in Poland before World War I. For a period of thirty-five years he has been gathering evidence with respect to other historical cases. In the present small volume he sets forth much of that evidence carefully and lucidly.

With respect to his central thesis, he makes a most persuasive case for the importance to nationality of cultural as against political factors. In this he is of course doing nothing new, but he does it with thoroughness, objectivity and scholarly resourcefulness. This reviewer is not persuaded, however, that he has demonstrated that a national culture society (an awkward term for which he apologizes, but can find no substitute) can exist for a long period without reaching for political power. Znaniecki himself, in his discussion of the rôle of economic leaders in the growth of a national culture, stresses the close connection between economic development and political stability.

Whether or not the state is necessary to nationality seems to this reviewer, however, relatively unimportant. The great contribution of this book is to be found in its clear analysis of the process of national development and of the sources of conflicts between nationalities. Here Znaniecki's profound scholarship bears rich fruit.

Clearing the way for his main task, the author divides all cultures into traditional (preliterate) and literary. As one subclass of the former he recognizes the folk cultures which are encysted in modern societies. The literary cultures are subdivided into the religious and the

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national. Sacred books form the basis of religious cultures. National cultures, he thinks, spring from a common literary language and, in some cases, from common works of art and music as well.

National culture societies are seen as being formed in two stages. First a national consciousness is produced among the intellectuals; later it is spread to the masses. Leadership in the initial stage is taken by men of letters whose works both standardize the national language and provide a common stock of ideas. Historians and ethnographers then begin to see the national culture as a unity (this happened in Italy in 1561). Once the national society has become a whole to its members, ideologists put forward ideas of national unification, national progress, a national mission, or (if the nationality is ruled by an alien Power) national independence. Meanwhile artists and musicians are building a national aesthetic culture, often by developing preceding folk themes; scientists are becoming symbolic figures of national achievement; and economic leaders are contributing to the common wealth.

Znaniecki's sociological grasp is especially apparent in the third chapter, where he shows the importance of various groups in developing the national consciousness among the educated classes. He mentions the royal courts, the craftsmen's guilds, academies, learned societies, universities, artistic and musical associations, political groups of national ideologists, and, finally, governments themselves (as in Nazi Germany). What the author is here stressing is that a national culture society gets itself organized in many ways, the least of which may be the political.

Propaganda and education are the two methods of involving the masses in a national culture society. Propaganda is earlier in time because its use is not barred by illiteracy. Here Znaniecki treats the cult of heroes, myths of common descent and racial unity, the national land as a common and exclusive group possession, and the need for defense against enemies. Public education does not become an important means of developing national consciousness until after the acceptance of the democratic ideal; hence its influence was not felt much until after 1800. Since that time, however, public educational systems have become main bulwarks of the national spirit. Language, literature, history and geography lend themselves especially well to nationalistic teaching.

According to our author all nationalities tend to expand, either creatively by enrichment of content, or popularly by gathering new members, or both. Creative expansion does not create any international problems because it is not aggressive. Popular expansion, however, is

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almost always a source of friction. Whether by migration and conquest, by economic infiltration, by assimilation, or by ideological pressure, the expanding nationality steps on the toes of its neighbors. At this point there is a fine analysis of Russian nationalism and Soviet ideological imperialism.

In his prescription for avoiding conflicts, the sociologist is again apparent. He puts forward the hypothesis that intergroup conflicts are effectively inhibited only by active intergroup coöperation. And here he argues that the greatest positive force is creative cultural expansion. When two national culture societies that are in contact are undergoing enrichment they cross-fertilize each another. Not only is there the stimulation of persons on one side by persons on the other, but, more important, whole groups become involved. Libraries systematically acquire foreign works, foreign cultural leaders are invited to teach at universities, give concerts, and the like. Organizations are set up to carry cultural achievements outward as well: missionary colleges, Point Four programs, and special university attention to foreign students. But the best results are obtained when the process becomes multilateral. International meetings, the development of international associations, the popularization of international coöperation through travel and the mass media, and the founding of international political organs exemplify this. UNESCO as the first attempt to lay the basis for a world culture is favorably discussed.

In the concluding chapter Znaniecki has some wise things to say about the world culture that will become the foundation of a world society. Although he thinks it will take a long time, he believes it will certainly come. He points out that the ideal of the dignity of man is common throughout most cultures already. Moreover, social science, which can discover the best means of realizing common ends, is developing. The chief obstacle now is the Communist bloc. By withholding its citizenry from objective social science study, it is making difficult the application of science to the solution of human problems in terms of common values.

It is evident that this volume can hardly be considered a balanced treatment of the problem of nationality, for the political side is almost completely neglected. The author himself would, I think, prefer to regard it as an extended essay whose purpose is to restore balance to a hitherto unbalanced situation. As such, it is notably successful. Future scholars can have little excuse for underestimating the importance of cultural forces in nationality and nationalism.

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The Passing of Parliament. By G. W. KEETON. London, Ernest Benn, Ltd.; New York, John de Graff, Inc., 1952.—vii, 208 pp. 21*s*; $4.50.

In this book the Dean of the Faculty of Laws, University College, London, records his alarm over the increasing ascendancy of the British Executive over Parliament and the regular courts. The publisher extols it as a sequel to Lord Hewart's *The New Despotism* (1929), and as its tone and temper are about level with Hewart's philippic, this reviewer concurs with regret. Readers familiar with the work of Sir Carleton Allen, Sir Cecil Carr, Sir Ivor Jennings and Professors Robson, Wade and Bernard Schwartz will find no significant new material offered or issues raised here affecting the problems of "administrative law" in the narrow sense of the word: delegated legislation, administrative justice, and parliamentary and judicial control over these types of executive action. But they will find Keeton's discussion lacking in the balance and restraint characteristic of the writings of the above authorities of diverse political outlook. Apart from a number of skillful and lucid sketches on topics like Stuart legislation, impeachment, and the *Conseil d'État*, the book is principally a political pamphlet. And as such it is notable chiefly for the untenable arguments Professor Keeton employs in straining to close the gap between the admittedly impressive evidence he has marshaled (for example, on the erosion of the *ultra vires* doctrine) and his despondent conclusions which follow quite naturally—from his premises.

Not only does Professor Keeton believe that the British people have since 1945 stumbled a "significant part of the way along the road to Moscow" (p. 13), he even caps his polemic with the assertion that "Great Britain today is a country in which an all-powerful Executive . . . exercises despotic power" (p. 201). It is unnecessary to demonstrate the absurdity of this sweeping verdict by pointing to the security in Britain of the personal and political freedoms—the antithesis of despotism. The matter is clearly one of definitions tailored to fit political predilections. For Keeton, freedom is one-dimensional; it means the absence of governmental restraint of whatever origin or incidence, and is indistinguishable from the laissez-faire ideal of the Whiggish "nightwatchman's state". Despotism, therefore, is the encroachment of public policy upon "private right", including the traditional common-law rights of property and contract. This extreme premise vitiates his strictures on the multiplication of nonreviewable administrative powers, for the latter problem is least likely to be solved by or at the behest of critics lacking sympathy for the social objectives that have

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led successive Parliaments to confer such powers. (It is no remedy, after all, to dump the baby with the bath water.) Moreover, as British "collectivism" is the offspring of political pluralism and free elections, the author's outlook places him squarely in opposition to the democratic process. It is much to his credit that he refuses to evade this challenge and takes the antidemocratic offensive with complete candor. Far from restricting his indictment to the phenomenon of Laborite socialism, he clearly implies that the genuine conservative of today must reject even Tory democracy (pp. 123, 125, 194). Given the rationality and political awareness of the English unpropertied and the lack of constitutional "checks and balances", the conservative case is, indeed, a case against universal suffrage. It is therefore entirely fitting for Keeton to decide that universal suffrage "has been a substantial failure" (p. 58).

> The Duke of Wellington was right when he hailed the first Reform Bill as the first stage of a flood which would eventually submerge the Constitution.... There must be more direct and tangible benefits for those whose votes now dominated elections. Accordingly, policy changed steadily from social reform to social revolution. It was not sufficient that conditions should be improved. They must be changed (pp. 59-60, 18).

What is the way out of this predicament? It is clearly no use proposing to resurrect Guizot's *régime censitaire*, the "stake theory" of the suffrage. Professor Keeton flirts with "checks and balances". He implies the need for an "effective Second Chamber" (pp. 56, 196, 201) and even turns against legislative sovereignty—strange as this may seem for a devotee of 1688 and in a book deploring "The Passing of Parliament", and inconsistent as it is with his remarkable view that "in our own day, the seventeenth century battle between Parliament . . . and the Executive . . . is being fought again" (p. 58).

"It is, in fact, the very existence of a formally unfettered Parliamentary sovereignty that is the main source of weakness in our existing institutions, when the legal sovereign has shown itself so willing to delegate its powers as Parliament has . . ." (p. 202).

Keeton, of course, is not the only English writer to develop in recent years a penchant for constitutionalism on the American model, and he is doubtless justified in speculating (pp. 7-8) that if Dicey had written thirty years later he would have taken a much more favorable view of written "constitutional limitations" than he took in his *Law of the Constitution.*

Keeton's fear of executive power is motivated, in part, by a distrust of the Civil Service which perpetuates what Robson once called "the

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cloak and dagger view of bureaucratic conspiracy." Indeed, his exaggerated estimate of the power, autonomy, cohesion, ingenuity and malice of the bureaucracy (pp. 57, 67, 86, 193) may be described as a farrago of the views of Hewart, Max Weber and James Burnham.

The most disconcerting aspect of this book is, to put it bluntly, the "guilt by association" technique the author uses to bolster his thesis that Britain stands on "the edge of dictatorship" (p. 33). His parallels to the Stuart despotism are unhistorical and fall of their own weight, but far more deplorable are his recurring references to the nature or origins of the Nazi and Soviet terror systems (pp. 11, 28, 31, 33, 131, 188-89), pointing out surface similarities to present-day British governmental machinery. Thus, he carries his tendency to present the essential as the superficial, and vice versa, to the point of asserting that the extent to which political machinery capable of organizing a slave state already exists in Britain is "concealed" by the fact "that the system of two-party government is deep-rooted in our political consciousness" (p. 15), and of noting plaintively that "today virtually our only remaining constitutional safeguard is the habit of tolerance and the existence of a powerful political opposition" (p. 33). And, in support of his case against executive legislation, Keeton professes that the Nazi and Vichy dictatorships were able to mature in the womb of parliamentary democracy *because* of the constitutional rulers' acquiescence in bureaucratic emergency legislation—a thesis often stated and never yet proved. This theory of the advent of fascism by a process, so to speak, of constitutional osmosis not only does havoc to his apparent faith in the protective value of written constitutions; the perspective in which it presents the state of affairs in Britain is badly out of focus, omitting as it does all peculiarities of English history and national character. The following is the *pièce de résistance* in this connection: "The Social Democrats who were the backbone of the Weimar Republic, prepared their own downfall by the easy recourse to wide delegations of power to achieve social reform which an ambitious bureaucracy suggested to them. Hence . . . [neither] the judiciary of Republican Germany . . . [nor] the civil service [both strongholds of conservative authoritarianism!] . . . was in a position to offer prolonged resistance to the authoritarian onslaught" (p. 188).

Since Keeton opposes both welfare state and parliamentary sovereignty, it is not surprising that he offers no concrete suggestions for reducing the tensions manifest in England between government by predictable law and the policies of social justice—except an implied endorsement (pp. 96, 176) of Robson's long-standing proposal to set up

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a system of administrative courts (lately supported also by Allen), and some startling, though opaque, hints (pp. 51, 53-54) that it might be desirable to revive impeachment and acts of attainder as means of controlling the Executive.

There are no tables of cases and statutes, and an unusually large proportion of the text space is taken up by quotations.

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British Imperial Trusteeship, 1783-1850. By GEORGE R. MELLOR. Foreword by Jack Simmons. London, Faber and Faber Limited, 1951.—499 pp. 42*s*.

Now that the principle of imperial trusteeship has been applied by international agreement to all colonial dependencies, its history is likely to arouse increasing interest. Under the Charter of the United Nations all member states which are responsible for the administration of territories whose peoples have not yet attained full self-government " recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligations to promote to the utmost . . . the well-being of the inhabitants " and, more specifically, to insure, " with due respect for the culture of the peoples concerned ", their political, economic, social and educational advancement, and to develop self-government among them. This was an important new departure, without precedent in the Covenant or operating principles of the League of Nations, for it meant that *all* existing dependencies, and not merely those held under trust agreements, were to be administered in a spirit of trusteeship. Responsibilities for the government of dependencies, it is now recognized, are not of merely domestic concern. They are of international concern, and all member states of the U. N. that bear such responsibilities have agreed to transmit regularly to the Secretary General of the U. N. information relating to the economic, social and educational conditions in the territories for which they are severally responsible.

Evidences of the idea of imperial trusteeship can be seen in the history of other colonial empires than the British, in that of the Spanish colonial empire, for example, but in the development of the idea Britain has undoubtedly played a leading part. Yet we have had as yet no satisfactory comprehensive history of her activities along this line. It cannot fairly be said that Mr. Mellor has written such a history, but within the chronological limits he has set for his investigations—the two thirds of a century following the American Revolution—he has presented a great deal of material that will have to be utilized if and

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when it is written. His book is based upon diligent and extensive research in the Colonial Office records and other unpublished sources, parliamentary papers and debates, contemporary writings, and later secondary works. The text is fully documented in the notes appended to the several chapters, and there is a copious bibliography.

To Burke in his relation to imperial trusteeship Mr. Mellor might well have paid more attention. He does, indeed, give Burke chief credit for the genesis of the concept and believes that the reports of the protracted proceedings in the trial of Warren Hastings, in which Burke was the leading prosecutor, played a large part in familiarizing the British public with the idea. Yet Burke gets only a couple of pages in an introductory chapter.

The subjects with which the author deals in detail are the abolition of the British slave trade and of British colonial slavery, the treatment of the former slaves (with special reference to the British West Indies), the steps taken to safeguard the interests of colored immigrants (East Indian coolies and liberated Africans) in the British West Indies and Mauritius, and British policy regarding the "aborigines" of South Africa, Australia, New Zealand, and British North America.

Imperial trusteeship is a phase of humanitarianism, and it is probably true—"demonstrably true", says Professor Jack Simmons of University College, Leicester, in a foreword to this volume—that humanitarianism has played a more effective part in the colonial policy of Britain than in that of any other colonial Power. It has been a product, in great part, of evangelicalism and the Nonconformist conscience, and the Nonconformist conscience is a distinctively British phenomenon. There have been critics to cast doubts on the sincerity of the humanitarians, viewing their professed moral principles as rationalizations to justify the pursuit of self-interest. A recent critic is Mr. Eric Williams, who, in his *Capitalism and Slavery* (1944), expressed the opinion that Pitt's opposition to the slave trade was basically political and economic, not humanitarian—that his humanitarianism was really a cloak. His true motive, according to Williams, was to ruin Saint Domingue, which was rapidly forging ahead as a sugar producer in the 1780's and giving France control of the European sugar market. Pitt's object was to secure international abolition of the slave trade, which would ruin Saint Domingue—or if international abolition was not feasible, then British abolition, for the French sugar planters were so dependent on British slave traders that even a unilateral abolition by Britain would seriously dislocate the economy of the French sugar islands. The French planters of Saint Domingue were afraid that French Revolutionary principles would destroy the

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slave trade and slavery in the French colonies, and they offered the island to Britain in 1791. In 1793, after war had broken out with France, Pitt accepted the offer. Prolonged British efforts to capture Saint Domingue failed, to be sure, but "the very acceptance of the island meant logically the end of Pitt's interest in abolition." Thus Williams. Mr. Mellor and Professor Simmons react sharply against such an interpretation. They both believe that British humanitarianism and with it imperial trusteeship were essentially disinterested. Mr. Mellor is quite clear in his own mind that throughout the period with which he is concerned the principle of trusteeship was an integral part of British imperial policy. Such a conclusion, he believes, is "unavoidable for one who studies the documents relating to the African, slave and emancipated, the Asiatic immigrant, the Cape Hottentot, the Australian Blackfellow, the New Zealand Maori, and the Canadian Red Indian." That full effect was not given to imperial policy is not surprising. "Exhortations from Downing Street, transmitted through the medium of colonial proclamations and ordinances, failed to evoke golden conduct from those with leaden instincts, and it was well-nigh impossible to ensure that refractory planters and colonists, bushrangers and brutal stockmen, always remote in space and time from the imperial Government and frequently from the colonial Government, and countenanced by the racial *esprit de corps* of resentment against humanitarian sentimental meddling or by an *esprit de corps* of sheer criminality, would be penalized"; and even on the part of colonial governors, who could neither ignore colonial opinion nor dispense with colonial administrators, "a certain degree of procrastination and of lukewarmness was to be expected."

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Robert Livingston Schuyler

Anatomy of a Satellite. By Dana Adams Schmidt. Boston, Little, Brown and Company, 1952.—xii, 512 pp. $5.00.

Dana A. Schmidt worked in Prague for the *New York Times* from April 1949 to May 1950. When he came to Czechoslovakia he found the Communist régime there firmly established. The country's institutions were adjusted, at least on the surface, to the type currently known as the People's Democracy. His trained eye, however, discovered pretty soon that democratic traditions, symbolized by the name of T. G. Masaryk, were still alive under the red veneer. Before he left the country he was able to observe resistance not only among the middle class and the countryfolk but also among the workers who, in 1945,

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flocked under the Communist banners and, in February 1948, stood solidly behind the engineers of the *coup d'état*. *The Anatomy of a Satellite* is a summary both of personal experiences and of systematic studies of the Communist theory and practice.

The book is uneven in quality. Its first part, entitled "More or Less Personal", gives the author's impressions from Prague and closes with a detailed and sympathetic account of the case of William Oatis. The opening passages of Part II, sketching the course of Czechoslovak history up to the end of the Second World War, are too general to be of much use to advanced students. Mr. Schmidt is rather brief and pessimistic in his evaluation of efforts to keep the balance between East and West and to stall the Communists. When he speaks of the coup and its aftermath, or when he draws general conclusions from the downfall of Czechoslovak democracy, he writes with vigor and persuasive power, although he did not witness the February events on the spot.

The body of the book is a microscopic analysis of conditions in Czechoslovakia from February 1948 to the summer of 1952. Parts III and IV deal with the police state into which the country has been converted, and with the gradual sovietization of mind and spirit. The last section of the book, Part V, bears an ominous title: "Exploitation, Resistance and Purge". It reads like a preface to the trial of November 1952 with Rudolf Slanský and Vladimir Clementis as the principal figures. In preparing these three parts Mr. Schmidt drew heavily from his notes and files as well as from reports which, one way or another, reached the Western centers.

The Anatomy of a Satellite is likely to remain for some time the chief book on Communist-controlled Czechoslovakia. It will undoubtedly be widely read and often quoted. It would be a pity if some factual errors or minor flaws were taken over by students of current problems or other authors. Some corrections or retouches are suggested to prevent repetition of inaccuracies: The English equivalent for *Rudé Právo*, the central organ of the Communist party, is *Red Right*, not *Red Truth* (p. 255). This somewhat unusual title originated in the struggles, in 1920, for *Právo Lidu* (*The People's Right*), the Social Democratic daily when the Communist-oriented wing endeavored to seize control over the Social Democratic party. *Právo Lidu* with its respectable tradition remained in the hands of the Right-wing leaders, and the Communists founded a new journal, *Rudé Právo*. There are in the book two rather misleading discrepancies between the text and the index. Among the democratic ministers who, on February

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20, 1948, resigned their posts was Mr. Jan Kopecký, Minister of Public Works. His name has been left out from the index by its compiler and reference to his resignation appears under the name of Václav Kopecký who, of course, stood faithfully by Klement Gottwald and had no small share in staging the coup. References are made in the index under Prokop Drtina and Peter Zenkl to their arrest immediately after the coup. But the text (p. 115) speaks correctly of two state prosecutors who were arrested because they had conducted an investigation into the attempt to send explosive boxes to Drtina, Masaryk and Zenkl. Dr. Karel Engliš who was removed from his post (p. 123) was the Rector of Charles University and not director of its Law School. The number of professors of the philosophy faculty, purged the day after the coup, was far smaller than fifty as given by the author. The last public appearance of President E. Beneš was not at the funeral of Jan Masaryk on March 12, 1948. He came to Prague on April 7, 1948, attended the six-hundredth anniversary of Charles University and delivered a moving speech to the assembled delegates from abroad, professors and students.

Passing from isolated facts to matters of wider scope we wish to point out that Dr. Beneš' scheme of a system comprising only three parties dates from London, whereas Mr. Schmidt connects it with discussions leading up to the formation of the post-war cabinet at Košice (p. 96). The simplified system as presented in Dr. Beneš' message to the State Council on February 3, 1944 went far enough to meet the Moscow point of view but was abandoned by its author. The solution adopted at Košice was a mechanical operation by which the Right wing and moderate parties were suppressed. To the three parties listed in the book (p. 82) it is necessary to add the fourth, the National Democrats with a wide following among the Czech middle class. While endorsing the Communist verdict against those parties, the non-Communist leaders sanctioned a dangerous principle which could be at any time used against them.

In the thirteenth chapter of Part II, "The Lessons of the Coup d'État", Mr. Schmidt treats the essentials of the technique by which the Communists first established their primacy and later seized power. Reference is missing to a factor which in Czechoslovakia proved to be far more important than in any other Soviet dependency. The sense of solidarity with other Slavic peoples and the Russophile tendencies of the Czechs and Slovaks were cynically exploited by both the native Communists and their Moscow bosses. A thick smoke screen was created out of the vague all-Slav sympathies and it veiled the Soviet designs. But as it became, soon after the February coup, advisable to court the

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Eastern Germans the appeals from Moscow to the Slavic consciousness were discontinued.

A careful reading of Mr. Schmidt's book will bring profit to anyone interested in the fate of Czechoslovakia, or in the broader theme, the methods and techniques by which a democracy of Western coinage can be adjusted, in a comparatively short time, to the Soviet pattern.

OTAKAR ODLOZILIK
COLUMBIA UNIVERSITY

American Russian Relations, 1781-1947. By WILLIAM APPLEMAN WILLIAMS. New York and Toronto, Rinehart & Co., 1952.—367 pp. $5.00.

The promise of the title of this work, the most general such survey since Professor Bailey's *America Faces Russia* (1950), is unfortunately not realized in the performance. The emphasis is really on the period from 1900 to 1940, especially developments during Wilson's administration. The title somewhat misleads, since it is American government policy—with significant attention to pressure from business groups—which is stressed. And all too often after 1917 the State Department is erroneously made the official voice of Washington. Hardly a murmur is ever heard from the general public.

Perhaps the volume's greatest value is the fresh information it presents, especially concerning economic factors. Official documents in the National Archives have yielded new material and helped round out the old. But even more important is the assessment (through use of private papers, interviews and correspondence) of the views of many men who have influenced our intercourse with Russia.

The early friendship between the two nations, quickly narrated in the opening pages, is shown disintegrating in Northeast Asia after 1895. Description of America's part in the conflict developing there down to 1917, especially as affected by Russo-Japanese rivalry over Korea and Manchuria, treats familiar events. Yet if American policy was "designed to pre-empt Asia as an American market" and Russia was "at no time a serious competitor in the markets of either China or Manchuria" (p. 47), then "America's intense antipathy for Russia" (p. 37) around 1903 remains unexplained. Although evidence on trade would illuminate the economic situation, it would not disguise the author's slighting of the Open Door and ignoring the totality of Far Eastern interests—especially concern for power relationships.

After November 1917 the Administration based its policy on the assumption that the Bolsheviks would collapse. Refusing to recognize Russia, Washington also did "all in its power to aid every serious and

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conservative leader whose aim was the destruction of the Soviet Government" (p. 105). This antagonism led to intervention, which consolidated Bolshevik power, thus increasing American enmity and creating a desire to outlast the Soviet state and promote its breakup or mellowing. Hence containment was "an established policy" early in 1918 (p. 107).

That the "Siberian intervention was an attempt to restrict Japan" the author concedes, but only in so far as this was "within the limits imposed by the decision to oppose the Soviets" (p. 129); for he insists that the United States supported and refused to abandon a program of anti-Bolshevik counterrevolution after 1917 (pp. 105-7, 121, 127-29, 135, 147, 163, 166, 170). Consequently one cannot look here for Wilson's Far Eastern policy in proper context, nor for Wilson "sweating blood" to postpone intervention, to which he finally assents in order to preserve a balance of power by restraining Japan, and for his supporting the impartial General Graves over the anti-Bolshevik State Department.

After traversing the "long, lean" twenties and the "tragic" failure to ally with Russia in the thirties, Professor Williams notes that neither world government nor preventive war is adequate for dealing with Russia. Nor, he asserts, is containment, which George F. Kennan brought up to date after World War II.

WINTON U. SOLBERG

UNITED STATES MILITARY ACADEMY

Surinam: Recommendations for a Ten Year Development Program. Published for the International Bank for Reconstruction and Development by the Johns Hopkins Press, Baltimore, 1952.—xxvi, 271 pp. $5.00.

For several years the International Bank for Reconstruction and Development has been issuing an admirable series of reports on the economies of various nations. These surveys are the result of invitations from the governments of the respective countries to study their economies with a view to possible loan aid from the Bank. Ceylon, Colombia, Cuba, Guatemala, Iraq and Turkey have been studied previously. In each case the International Bank's report is far and away the best source of information concerning the economies of these particular nations.

The present volume is no exception. The average reader, knowing little or nothing about Surinam—if he had even been aware of its existence before reading the book—will walk away from this small vol-

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ume with a vivid picture of economic life in this Dutch colony in Northern South America. The authors not only succeed in giving one the dry bones of fact about the Surinamese economy, they also are able to blow a certain warmth and understanding of the region into their writing, to impart the " feel " of the country. And this undefinable " feel " is almost as important in understanding the economics of a nation as it is in comprehending its politics.

The picture which one gets of Surinam is of a small colony of less than a quarter of a million souls, a polyglot population left as a result of the slave and semislave exploitation of a plantation economy in a long-passed Golden Age. The descendants of Negro slaves, and Indian and Indonesian indentured servants live among the remnants and ruins of the social system and the economy which first brought their ancestors as bondsmen to these shores.

The plantations are all but gone. To work as a wage-earner in agriculture is to lower oneself, to associate oneself with the degrading life of one's ancestors. So Surinam has become a nation of very small landholders, for the most part tilling the soil in a very uneconomic manner. Those who *do* work for wages in the bauxite mines (foreign-owned and producing a larger part of the country's foreign exchange) receive wages which are high for the type of economy which exists in Surinam.

The International Bank Mission has not been oblivious to these social and political problems. Although it touches but fleetingly on the political developments under way in the colony (its move toward self-government—one of the Caribbean area's more interesting experiments in substituting coöperation for colonialism), it does recognize the reality of the people's revulsion against plantation colonialism. The Mission has oriented its recommendations for the development of Surinam around the small farmers and possibilities for coöperation among them rather than on the revival of plantation agriculture as the backbone of the economy. It foresees the plantation system as having only a very limited rôle, and that only if workers can be obtained from abroad.

The Mission's recommendations cover the whole range of economic activity—agriculture, industry, transportation, energy and power. Its suggestions are generally in the form of comments on, suggestions about, and emendations of a Ten Year Program drawn up by the Surinam government itself. Its picture is one of hope and optimism for the future of this small corner of the globe. For this reason, if for no other, it is refreshing in this day and age.

ROBERT J. ALEXANDER

RUTGERS UNIVERSITY

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The Commonwealth of Australia: The Development of Its Laws and Constitution. Under the general editorship of G. W. PATON. London, Stevens & Sons Ltd., 1952; xvi, 355 pp. £2 15s.

This publication is entitled Volume 2 of the series *The British Commonwealth,* the general object of which is to present an account, in outline, of the evolution of the laws and constitutions within the countries comprising the British Commonwealth. The volume in question is in the nature of a symposium, the contributors (some academic, others practitioner) being specialists in their own particular fields.

The title of the book under review could mislead, in that the subject matter, far from being restricted to the laws of the Australian Commonwealth as a political entity or a legal personality, extends to the laws of the various component states of that Commonwealth. The term " Commonwealth of Australia " is an expression that is not invariably employed compositely to cover, or describe, the states as well as the Commonwealth itself.

The book is divided into three parts. The first, which is by way of introduction, is devoted to the reception and application of the common law in Australia, the nature of the Australian constitutional basis and background, and the character and growth of its administrative law. The second singles out, for some particular consideration, certain branches or sections of the private law—real property, family (notably marriage and its dissolution), succession on death to property both real and personal, the systems of procedure and pleading in the courts, and the organization of the legal profession. The third is an attempt to indicate the impact of legislative activity on some aspects of Australian community life and phases of its economy; in it are chapters directed to the mercantile law, the industrial law, the law in relation to agriculture (including the marketing of farm products), and the legislative provision for the various categories of social services. The treatment throughout is summary in nature.

To limit the size of the book it was wisely decided to place the emphasis on those features of the laws in Australia that reveal developments of, or divergencies from, English opinion. But, consistent with the determination to produce a work of manageable proportions, brief space might, with advantage, have been found for such matters as companies, trusts and trustees, bankruptcy, and factories. Nevertheless, in spite of omissions and compression, the contents may fairly claim to be comprehensive, and generally expressive or representative of the law that has been shaped in Australia. For the student or practitioner in search of further or fuller knowledge, a useful bibliography

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is appended. The indexes (which include tables of statutes and cases cited in the text) are well done, and add substantially to the convenient handling of the book.

Like all volumes that spring from the pens of a multiplicity of contributors, the work varies, in quality and manner of treatment, from chapter to chapter. There is, however, little duplication or overlapping in material as regards the different articles, and an absence of serious contradiction in the statements and submissions of the various individual writers. The book shows evidence of careful preparation, and the matter is both well arranged and lucidly expressed. It commands the attention and interest of the reader to the last page.

It will be agreed, with Professor Paton, that the task of surveying legal evolution in Australia is an undertaking not easy of fulfillment. The editor and authors have succeeded in their main purpose, and their book is assured of a warm welcome.

UNIVERSITY OF MELBOURNE
AUSTRALIA

ORWELL DE R. FOENANDER

Cyclical Movements in the Balance of Payments. By T. C. CHANG. London and New York, Cambridge University Press, 1951.—x, 224 pp. $3.75.

The main theme of this survey of balance-of-payments data for the period 1924-38 is that the foreign trade of industrial countries tends to show surpluses in boom years and deficits in depressions, while agricultural countries have deficits in booms and surpluses in depressions, and that these shifts on the current account of the balance of payments are offset by changes on long-term capital account. Trade balances and capital movements, though largely independent of each other, are both of them related to a common cause: the ups and downs of economic activity.

This cyclical hypothesis of synchronization between trade and capital movements is taken over, without acknowledgment, from earlier writers (including Bloomfield, who applied it successfully to the American balance of payments in the minor cycles of the 1920's). Here it is expanded into a general theory. The evidence on which it rests is, however, heavily weighted with the particular characteristics of the boom of the late twenties and the great depression of the early thirties. In the upswing that started in 1933 and in the slump of 1937-38, international long-term capital movements were virtually nonexistent—and we find the merchandise balance of agricultural countries following a different pattern, marked by a sharply unfavorable change in

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1937-38 (see table, p. 169). Had the author paid a little more attention to the cycle of the later thirties, he might have been led to question the universal validity of his theory.

Another distinctive feature of the book is the calculation of both price and income elasticities of demand for the exports and imports of a large number of countries. Having published these figures earlier in various journal articles, the author might have developed this material and revised it more extensively before reproducing it in this book. As it stands, it strikes one as somewhat scrappy and loosely organized, and it is not free from internal discrepancies.

Chang's figures have been widely noted for the low values they give to price elasticities of demand, and have provided ground for skepticism regarding the efficacy of price adjustments in international trade. The reader should now be referred to Orcutt's criticism (*Review of Economic Statistics*, May 1950) of the methods whereby figures of this type are derived, and of the sources of bias to which they are subject, tending systematically to underestimate the responsiveness of demand to changes in price.

In his treatment of the income elasticity of demand, Chang does not seem to be aware that this concept can be defined in terms of the marginal divided by the average ratio of imports to national income, as well as in terms of the percentage changes in imports and incomes which he uses. In his calculations of average and marginal import ratios he fails to note the size of the country as an elementary factor influencing these figures and helping to account for differences between the estimates for various countries. When he tells us that, for example, the Swedish cycle has a smaller, and the Canadian a larger, amplitude than the "world cycle", one would like to know how these intriguing propositions are arrived at; but here and elsewhere the author fails to take the reader into his confidence. The outcome is inevitably a lack of confidence on the part of the reader in some of the statistical estimates as well as the many unsubstantiated assertions in the text.

Chang's subject is extremely interesting—much more than that cannot, unfortunately, be said for this book. The subject requires more careful and systematic statistical research, of a kind that is hardly possible without institutional support. At least the author deserves commendation for a valiant attempt through individual enterprise to reduce the lag of statistical work behind the march of theoretical innovation in the field of international economics.

RAGNAR NURKSE

COLUMBIA UNIVERSITY

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American Monetary Policy. By E. A. GOLDENWEISER. New York, McGraw-Hill Book Company, 1951.—xvi, 391 pp. $4.50.

There is today no field in which public tolerance of attemps at wise policy is more requisite than in the field of economics; and in that general area monetary policy stands, with tariff and fiscal policy, as a great trilogy of problems challenging statesmanship. This is true equally in the domestic and international arenas. The problem is gargantuan.

The group of outstanding American business men who in 1942 organized the Committee for Economic Development were concerned for a wise pursuit of " over-riding social and economic objectives . . . stability in our economy, adequacy and continuity of employment, and progress in living standards " (p. 363). Therefore they have financed a series of independent research studies calculated to increase understanding of the problems involved. Such understanding may counter, to some extent, the temptation confronting administrators and legislators to place economic factors in service to political expediency—a temptation of late often proved to be world-wide.

The extreme timeliness of the volume under review is matched by its proficiency. Its author, associated with research at the Federal Reserve Board since 1919, was Director of its Division of Research and Statistics, 1926-1945; and, despite this lengthy exposure to the pitfalls of bureaucracy and " governmenteze ", he has preserved a realistic, factual approach, expressed in language commonly understood and spoken. The reader does not have to be a specialist to understand, and become interested in, this exposition.

A concise summary of the modern rôles of money and lending agencies is followed by an explanation of the objectives of Federal Reserve management, its instruments and the development of its ideas. Concrete illustrations abound: four chapters describe policy decisions from 1917 through October of 1950. The relationship of the Federal Reserve to international operations and domestic institutions is explained. A final chapter proposes changes in Federal Reserve structure, pressing for a reduction in size of the Board, perhaps to a single Governor with Cabinet rank and two deputy governors. Within the narrative numerous charts are dispersed, based upon fifty-six pages of statistical tables comprising an appendix. Extensive footnotes are omitted because, says the author, the book represents " largely a distillation of many people's thinking as it has found lodgment in the writer's mind over the years " (pp. xi-xii). The index, however, is too skeletal to be adequate.

The special worth of this record of experience in handling monetary

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problems rises from Goldenweiser's constant awareness that the Federal Reserve System is a human institution operating in a variety of successive mental climates—sometimes a climate of "depressed minds" (p. 20) and again in a climate of ebulliency. The first page of the narrative sets the tone for all to follow, opening with the reminder that the central banker is neither a scientist nor an artist, but a craftsman, "trying to produce a serviceable commodity—economic stability". Some of the dangers lurking to snare him are hidden in totals, in impersonal aggregates and in immediacy. "Monetary management can never be scientific" (p. 17). "Politics . . . has been in command in Washington for a century and a half. Economics as such, on the other hand, has been relatively a newcomer in government. It must function through established political channels and can hope to make progress toward influencing decisions only to the extent that it can gradually win popular support by inspiring confidence in its competence and integrity" (p. 302).

It follows that the tyranny of events may cause the end use of a mechanism to differ greatly from the use originally envisaged; it is grossly unfair to denounce past action by simple hindsight. Any reader who has had to explore the relationship of government to specialists in any field, whether history, government, economics or others, will appreciate especially the brief chapter on the furnishing of "economic intelligence" to the system; it touches upon that vital bureaucratic problem of intellectual integrity. Although the author continually implies the nexus between distortions of economic policy and political expediency, he for the most part avoids citing chapter and verse thereon; a succinct illustration is his few words on silver policy, as belonging "in a treatise on politics rather than on monetary policy" (p. 265). Perhaps that kind of political history is needed, in several fields.

JEANNETTE P. NICHOLS

PHILADELPHIA, PA.

A Constitution of Powers in a Secular State. By EDWARD S. CORWIN. With a Foreword by F. D. G. Ribble. Charlottesville, The Michie Company, 1951.—ix, 126 pp. $3.00.

A series of three lectures delivered by Professor Edward S. Corwin at the University of Virginia in 1950 has been published together with a fourth chapter which fills this small volume. In "The Passing of Dual Federalism", Professor Corwin is concerned over the steady growth of power of the central government which has been the pat-

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tern of our recent constitutional history. It is interesting that he looks to the Congress to save the federal system. When the Supreme Court upheld the Social Security and the Wagner Labor Laws, the states were abandoned to " Cooperative Federalism " which can result only in the extension of national power because of the superior strength of the federal government in the partnership. Thus, he says, the maintenance of the states of the Union " as the vital cells that they have been heretofore of democratic sentiment, impulse, and action " as well as " the future preservation of the Federal System rests with Congress rather than with the Court " (pp. 27-28). This may be to say that the federal system exists at the pleasure of the national legislature, but it is in the tradition of McCulloch *v.* Maryland that it is safe in Congress' hands. It is to Congress' localism that Professor Corwin attributes its rôle as " the last bulwark of federalism, the last barrier to centralization " (p. 78), as against the consolidating tendency of the executive branch.

In " The Problem of the Presidency ", which reflects the author's uneasiness over the power of that office, he urges the establishment of a Joint Legislative Council by both houses of Congress, from among whose members the President would choose his Cabinet. Such a body would have the double virtue of bringing the locally minded Congress into contact with problems of national interest, and tending to keep within bounds the powers of the President, since the proposed Cabinet would, " by maximizing the availability of the national lawmaking power . . . minimize the need for autocratic courses in times of stress " (p. 81). While it may be that such a Cabinet would be more truly a consultative body than the present Cabinet of busy department heads, its difficulties are apparent, not the least of which would be occasioned by the unlimited privilege of Congress to change the personnel of the Council which Professor Corwin would provide. The author himself points to many of the problems involved in his proposal, although he does feel that some would be ironed out in the inauguration of the plan. A sidelight of Professor Corwin's lecture on the Presidency is his observation that only in 1888 has it happened, " when two candidates divided the electoral vote between them, that the one with the smaller popular vote was elected " (p. 86). Most authorities would also cite the election of 1876.

The other of the Virginia lectures, " The Atom Bomb and the Constitution ", suggests the many constitutional questions in the way of our participation in an international control organization.

The chapter which is added to the Virginia lectures, and which is most closely related to the title of the book, is a reprint of " The Su-

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preme Court as National School Board", the attack on the Court's decision in the McCollum release-time case (Ill. *ex rel.* McCollum *v.* Board of Education of Champaign County, 333 U. S. 203 [1948]) which appeared in Fordham University's *Thought* (vol. XXIII, No. 91, Dec. 1948, pp. 665-83). By this date, Professor Corwin's book must of course be read with an eye to the decisions of the Supreme Court during 1952 in a release-time case (Zorach *v.* Clauson, 343 U. S. 306) and in the steel case which bears on the powers of the President (Youngstown Sheet & Tube Co. *v.* Sawyer, 343 U. S. 579).

As usual, Professor Corwin's peppery style lightens the study of weighty problems of constitutional history. Understandably, some find his writing now and then assertive, but this, like his occasional barbs at persons and people, is often with respect to remarks on collateral questions which are his own species of *obiter dictum*. Professor Corwin's serious considerations, in the light of his monumental learning, must always be accorded the strictest attention, if not complete agreement; and this work is not excepted.

Julius Yanuck

Columbia University

Uncle Sam in the Pacific Northwest: Federal Management of Natural Resources in the Columbia River Valley. By Charles McKinley. Berkeley and Los Angeles, University of California Press, 1952.—xx, 673 pp. $7.50.

Professor McKinley of Reed College has long been interested in the governmental aspects of the conservation and utilization of natural resources. In this volume he has turned his attention to a region and a phase of public administration which have long presented special difficulties. The economic development of the Pacific Northwest has depended in a large measure upon federal government assistance. Yet public policy in the area has been fragmented by the large number of different government agencies which have accumulated various activities.

After a general account of the physical characteristics and economy of the region, Mr. McKinley begins a description of the major programs conducted by federal agencies involving control or promotion of resources. First, there are the dual ends of flood control and navigation in the region's rivers entrusted to the Army Corps of Engineers. This work necessarily has certain incidental concerns with the generation of hydroelectric power and with the irrigation of arid lands. Second in importance is the Bureau of Reclamation responsible for

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promoting utilization of water resources for irrigation, but also having incidental interests in power and flood control. The Bonneville Power Administration is a government agency for distribution of publicly generated power, but incidentally concerned to develop economic markets and the widespread use of power. These ends necessarily entail widespread disagreement about ways and means. The Federal Power Commission must approve the power facilities built into flood control and navigation projects, and comments usually about the same features of irrigation projects.

The Bureau of Land Management holds the government supervision of large tracts of the public domain, land not subject to individual entry, revested lands, or lands (as any aerial traveler has observed) that no individual has cared to own. Other large tracts are held by the Forest Service and the National Park Service. Here there are common problems of grazing rights, timber management, recreation facilities, and even of water control. The Soil Conservation Service is concerned to encourage individual owners to check erosion and to preserve the useful life of their soil. The Fish and Wildlife Service has the dual task of conserving the fish in the rivers and off-shore as well as the game which frequents the land. To these, the author adds two other federal government agencies, the Geological Survey and the Bureau of Mines concerned with the investigation of mineral resources, along with certain incidental promotional, production and regulatory duties.

It takes nearly 400 pages to present the principal work each of these agencies performs in the Pacific Northwest and how each proceeds to organize and perform its tasks. The basic question is how the work of all of them is to result in some general scheme of regional well-being. The author has found that, just because some of these agencies are grouped together into a superior authority called a Department in Washington, this is no guarantee of either economical operation or common purpose in a region 2,000 some miles away. The further end of trying to arrive at consensus in water and other development activities among all this array of government programs has defied any ready solution.

Mr. McKinley is not convinced that the answer is necessarily a Columbia Valley Authority modeled upon the TVA. Indeed, the bureaucracies themselves have played a major rôle in opposing legislation to create a single government agency in the region responsible for water development activities. Rather, the author concludes that there are certain values in the familiar departmental and bureau mode of government organization (p. 567). At the same time, he declares that "prospects are dismal" for curing the well-known jurisdictional dis-

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putes between the Corps of Engineers and the Bureau of Reclamation (p. 574). He therefore advocates a new National River Development and Management Administration, within a newly named Interior Department. This new agency would have sub-units organized on a geographical basis, one such being for the Columbia River area. In so far as the land management agencies are concerned, Mr. McKinley proposes the eventual amalgamation of the Forest Service, Park Service, and Bureau of Land Management within the Agriculture Department. Finally, he urges that the Executive Office of the President should have a regional representative located in the area—a kind of sub-chief executive to exercise administrative oversight of all federal government activities in the region and to take charge of the preparation of comprehensive regional development plans.

Only in a brief final chapter does the author discuss some of the essential elements of the American political process which have built up the present administrative structure, perpetuate its existence, and defeat all efforts at change. Although from time to time Mr. McKinley refers to bureau-client relationships, the politics of natural resources control and use is never fully explored.

This volume is nonetheless an important addition to the literature of American government. It marks new ground in its emphasis upon programs and only secondarily upon organizational structure. It takes a realistic view at the overly enthusiastic promotion in the past of river valley authorities. It at least acknowledges the existence of a political practice which encourages administrative conflicts. For all of these and other virtues as well, students of government must acknowledge their debt to Professor McKinley.

JOHN D. MILLETT

COLUMBIA UNIVERSITY

Due Process of Law, 1932-1949: The Supreme Court's Use of a Constitutional Tool. By VIRGINIA WOOD. Baton Rouge, Louisiana State University Press, 1951.—ix, 436 pp. $6.00.

Miss Wood has related the construction and application of the due process clauses in the national Constitution by the United States Supreme Court during the period to which reference is made in the title. She believes that the 1932-1933 term of the Court represents a landmark because " the court majorities indicated the beginning of a shift in the interpretation of the restrictive quality of the two due process clauses." By 1948 this shift had developed, in the author's opinion,

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into a rather significant element in the course of constitutional law concerning the protection of individuals and their property.

She has organized over three hundred cases passed on by the Court into five major categories: those dealing with the First Amendment, with socioeconomic legislation, with criminal proceedings in the state and federal courts, with administrative actions and with the tax power. In each class the writer summarizes the cases and attempts, where possible, to generalize about the trend of the decisions. In a final chapter she presents her chief conclusions. In addition to an index, a table of cases is included.

One of the principal conclusions of the author is that "the post-1932 judges have come no closer to an objective standard for the application of due process than did the many justices before them." This is substantiated by the analyses of the cases in each of the aforementioned divisions. Her explanation of the apparent inconsistencies of the Court is the not particularly novel one that "judges, like other people, have preconceived notions of what they want in the way of a government and a society [and that,] . . . in putting their theories into practice through judicial opinion, they have been forced into positions equally as illogical as those of previous courts."

During the time under discussion the due process clause in the Fourteenth Amendment was used to strike down several restrictions by state and local governments on civil liberties while much legislation primarily concerned with property rights survived the Court's scrutiny. Moreover, the concept of freedom of contract, the doctrine of businesses affected with a public interest, jurisdiction as a territorial concept in the exercise of tax power, and the fair-value theory in rate making were practically abandoned by the Court. Although these changes occurred within a period when there was a one hundred per cent turnover in its personnel, Miss Wood holds that the Court had begun to alter its views on these matters prior to the appointments by Presidents Roosevelt and Truman.

The history of these developments is heavily documented with numerous references to the legal literature on many important topics. Except for scattered comments on the wisdom or the consistency of some of the decisions, the author has remained content to present the gist of each case within the various pigeonholes that she has arranged for them. An incomplete index to the table of cases detracts somewhat from the usefulness of the book.

FRANKLIN A. SMITH

NEW YORK CITY

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BOOK NOTES

Of all the great editors of the era of personal journalism in America probably none is more remembered than Horace Greeley of *The New York Tribune*. Through his paper, and particularly through its nationally circulated weekly, he exerted enormous influence that was perhaps the greater because Greeley spoke more often from the heart than from the mind. He expressed the idealism of the reformer in an age of reform, and though he often seemed fuzzy-minded about particular issues and contradictory, his readers seemed not to care. They loved "Old Horace" with his homely features, his untidy dress and ungainly figure. They overlooked his faults, which were many. Greeley could be cantankerous, and often was. He could be illogical, and his enemies thought that was most of the time. During the Civil War he shifted his position so frequently that no man could guess what Greeley would be saying in *The Tribune* when it next came from the press. One thing was pretty certain: he would be trying to tell President Lincoln how to run the war, how to save the Union, and how wrong present policies were. Andrew Johnson said of him afterward: "He nearly bothered the life out of Lincoln and it was difficult to tell whether he wanted union or separation, war or peace." The story of Greeley's relations with Lincoln during the Civil War has been told many times. What Harlan Hoyt Horner has done in his carefully recorded *Lincoln and Greeley* (Urbana, The University of Illinois Press, 1953; viii, 432 pp. $6.00) is to trace the careers of the two men from the first time they might have met—in Chicago in 1847—until Lincoln's death in 1865 and Greeley's seven years later. It is more than a tracing, of course, for Mr. Horner is concerned particularly with how they responded to the issues of their time, the areas of agreement and dispute. Despite Greeley's widespread influence, the relationship between his ideas and those of the rising Illinois politician often seemed to have small import before 1860; contrariwise, during the Civil War years the relationship came close to being crucial. For example, Lincoln, who in New York City could count on only *The New York Times* for constant and steady support, wanted and needed that of *The Tribune* also. Greeley, said Lincoln in 1861, "is a great power. Having him firmly behind me will be as helpful to me as an army of one hundred thousand men." Most of the time he had to do without that help. There is drama in the story of Lincoln and Greeley

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during the war years, but Mr. Horner never makes the protagonists really move or live, and the drama, while indicated, remains undeveloped. So with the historical background of the whole book; it is sketched, but has no depth. The burden of *Lincoln and Greeley,* in fact, is borne by the extensive quotations from the two men, and these are so many and so full that the study becomes almost a source book. That is the principal importance—and a very real importance it is—of this handsomely packaged product of the University of Illinois Press.—FRANCIS BROWN, New York City.

Franklin D. Roosevelt was one of the greatest vote getters in American history. *Champion Campaigner: Franklin D. Roosevelt* by Harold F. Gosnell (New York, The Macmillan Company, 1952; viii, 235 pp. $3.50) presents in the form of a readable short biography, an astute analysis of the ingredients that compounded his success. The author's long experience as a political scientist lends especial validity to most of his evaluations. These he has based on contemporary personal observations, printed materials, and to a lesser extent on the superabundance of manuscripts at Hyde Park. The outline that emerges is familiar and sound. After speedily sketching Roosevelt's background and early years in politics, Gosnell concentrates upon the major campaigns. The futile 1920 campaign for the vice presidency, he points out, provided Roosevelt with indispensable experience. Roosevelt blundered when it made no difference and profited by his mistakes. Later during the 1920's when Roosevelt was recovering from polio, through incessant letter writing and able political engineering he succeeded in remaining an important figure in the Democratic party. Already he and Louis Howe, his secretary, were carefully laying plans for an assault on the White House. The first major step came in 1928 when Roosevelt won the governership of New York by an uncomfortably narrow margin. His reëlection two years later by a staggering majority made him the leading contender for the nomination. He heightened his chances through working adroitly to heal over the rift between the rural and urban factions of the Democratic party. There follows the familiar story of the fight to win the 1932 nomination, and the four successful presidential campaigns. Gosnell presents considerable interesting information on the techniques Roosevelt employed, and he analyzes the vote. However, he does relatively little to show how Roosevelt molded New Deal policies to woo the voters, as for example in 1935 and 1936 when, according to Basil Rauch, Roosevelt shifted the emphasis of the New Deal in order to meet a threat from the left. In a thought-provoking concluding chap-

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ter, Gosnell sets forth the keys to Roosevelt's success. Among them were his long experience, eye to detail, use of slogans, and exemplification of the American tradition. As for Roosevelt's personality, "He had charm, optimism, confidence, generosity, faith, a vibrant voice, a handsome physique, a good memory, courage, a fine sense of humor, an excellent digestion, freedom from worry, a great gift for words, calmness, poise, and patience. He liked to use his talents to win the attention and affection of others" (p. 270). And, of course, he had an unlimited capacity for hard work in the field he loved, and ordinarily a keen sense of political timing. These characteristics, the party organization, the New Deal policies, and the times combined to make him the "champion campaigner".—Frank Freidel, University of Illinois.

These are happy times for the historical reputation of the Stephen family. Noel Annan's study of Sir Leslie Stephen, published here in 1952, admirably placed this leader of the Victorian intellectual aristocracy in his setting. Now, with the publication of *James Stephen and the British Colonial System, 1813–1847* (Madison, The University of Wisconsin Press, 1953; ix, 315 pp. $5.50), Professor Paul Knaplund has done justice to the rôle of Sir Leslie's father as a shaper of British colonial policy. Sir Leslie himself thought that this could not be done; for, when he wrote the sketch of his father's life in *The Dictionary of National Biography*, he stated that Sir James had devoted his best years and greatest gifts to "work of which it is impossible that any estimate should be formed." Almost three decades of digging, however, have enabled Professor Knaplund to disprove the judgment of his hero's son. In a number of important articles published in learned journals and now in the present volume, he has blasted the legends surrounding Stephen that were fabricated by his enemies, the pro-slavery interests and such colonial reformers as Charles Buller, Sir William Molesworth, and Edward Gibbon Wakefield. Nor is there any question of Professor Knaplund's success in rehabilitating Stephen. Indeed, he proves conclusively that Stephen stood among the most advanced thinkers of his time in his conception of British imperial policy. His views concerning colonial administration, land settlement and colonization, slavery, religion, education, economic matters, justice, and self-government overseas bore little relationship to the image of him as a defender of old abuses that was fostered by his detractors. Professor Knaplund's book is a model monograph, based on countless hours not only of research but of thought. It demonstrates what a

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misfortune it would be if the historical monograph were really on the road to extinction, as some publishers insist that it is and ought to be. In fact, the only serious objection to this book is its price, which unfortunately will assure it a smaller permanent audience than it deserves.—HERMAN AUSUBEL, Columbia University.

The problem of morality in government is generally attacked at either one of two levels. One approach stresses the administrative and legal procedures that are necessary to curb venality. The other, more concerned with the cultural context of American politics, urges that administrative laxness simply reflects the moral tone and the social arrangements of the whole community. It is the great merit of *Morality and Administration in Democratic Government* by Paul H. Appleby (Baton Rouge, Louisiana State University Press, 1952; xiii, 261 pp. $4.00) that it deals with a "middle area" embracing the range of politics—administration, legislatures, courts, and the political pressures and vacuums amid which they operate. The basic elements of a distinctly democratic morality, says Appleby, include the following (p. 36): that the government action "conforms to the processes and symbols thus far developed for the general protection of political freedom as the agent of more general freedom; that it leaves open the way for modification or reversal by public determination; that it is taken within a hierarchy of controls in which responsibility for the action may be readily identified by the public; that it embodies as contributions of leadership the concrete structuring of response to popularly felt needs, and not merely responses to the private or personal needs of leaders." This view of the nature of the problem of governmental morality enables Appleby to see it, not as a simple matter of honesty vs. corruption or good vs. bad, but a matter of conflicting values in a pluralistic society. Americans believe in responsibility, control, morality, integrity, and the like; but they also believe in humaneness, discretion, flexibility, loyalty, responsiveness. The author, who is the Dean of the Graduate School at Syracuse and was for many years a prominent official in the Department of Agriculture, Bureau of the Budget, and Department of State, offers a spacious and deep-probing treatment of the ramifications of this conflict of values. Perhaps most notable is his handling of the failure of politics in the United States "to fill the great gap between free, ranging, pluralistic thought and the responsibility of decision-making" (p. 203). Yet a streak of optimism runs through the book. One senses that Appleby is not unduly disturbed over the weaknesses of our governmental system because he has confi-

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dence in the men who operate it. While the volume in places is as diffusive as the political and administrative arrangements it describes, it presents clearly and in detail the considerations that must lie behind any effective attack on administrative laxness, inefficiency and irresponsibility. The drawing up of detailed reforms Appleby leaves to those who like to draw up detailed reforms. A book that starts out as a study of governmental immorality ends up as an infinitely wise study of the whole sweep of American government.—JAMES MACGREGOR BURNS, Williams College.

In the twelve chapters of *Theorie der Vollbeschäftigung in der freien Marktwirtschaft* (Tübingen, J. C. B. Mohr [Paul Siebeck], 1951; v, 329 pp. DM 15.60), Hanns-Joachim Rüstow discusses the system of classical economists, the equilibrium in the noncapitalistic countries, the extent of the capitalistic world, changes in the number of employment possibilities and of the available labor force, principle of equilibrium in the private capitalistic economy, cost of production, income, profit, the money and banking system, adaptation of working facilities to the amount of available labor, the cyclical fluctuations, the task of economic theory. This abundant material is presented without reference to any sources with the exception of the author's brother, who teaches at Heidelberg, and Keynes, with whom he seems to be at odds. He discusses at length Keynes's *Treatise on Money* and *The General Theory of Employment, Interest and Money*. We find no mention whatsoever of Alvin Hansen, Theodore Morgan, Abba Lerner, Erik Lundberg, Krister Wickman, F. Marbach, and others, who have made considerable contributions to the most important subject of full employment. We do find, however, in several places, the advance notice of a new book on Economic Policies (*Wirtschaftspolitik*) which Herr Rüstow is planning to write. In this new book he will perhaps prove that it is possible to attain full employment in a free, competitive economy without controls (*planwirtschaftliche Eingriffe*). We failed to find this proof in his study under review, though it is emphatically announced in the leaflet distributed by the publishers. The book contains a rich compilation of material. This would make good and interesting reading if it were presented in a more digestible manner. The author's predilection for redundant discussions and sentences, comprising a quarter to a half of a page, makes the reading a rather cheerless task. The book might be useful to students of economic theory, who bring to it a good background in fundamentals and a thorough knowledge of German.—MICHAEL ALBERY, Boston College.

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The crowded but never congested field of texts in American Government greeted last year a courageous effort jointly authored by Professors James MacGregor Burns and Jack Walter Peltason. Their book, *Government by the People: The Dynamics of American National Government* (New York, Prentice-Hall, Inc., 1952; xvii, 946 pp. $5.50), breaks with many seemingly well-established traditions. For instance, it is designed to attract a nonacademic audience as well as to fill the text requirements for the one-year introductory college course. The authors have also used a functional approach, as their title suggests, and on this score they have achieved considerable success. Taking full advantage of such an approach, they have placed great emphasis upon the social, economic and demographic forces in our institutional life and have oriented the whole study of politics around the structure of and struggle for power. The result is a book that is essentially evaluative and critical, even though it contains an unusual amount of factual material. The fulcrum upon which the authors' critical lever rests is a theory of democracy that may be characterized broadly as Holmesian liberal. However, I suspect that most adoption decisions will turn not so much on the issues of approach and philosophical method as upon the matter of style. The authors have used many drawings, charts, graphs, tables and political cartoons to dramatize theses and to make statistical and other such factual data more readily understandable. Their purpose is admirable, but such intrusions in the text can be frequently more distracting than helpful. Any efforts to avoid the deadening effects of academic writing must be commended, but it is to be questioned whether in this case a liberated style has not in some instances carried the authors a bit too far in the direction of the journalistic. While it may be perfectly true that ". . . Montesquieu went all out for liberty" (p. 69) and that in making foreign policy "the Secretary of State serves as the President's 'right hand man'" (p. 588), one is led to wonder just how colloquial a style need be to make such truths palatable to the introductory student. In a similar vein, one can question the use of such techniques as the fictionalized dialogue (for example, that between "Aristo" and "Demo", pp. 41-47), with which even Plato had some difficulty at times. Factual errors are few and minor, although they do inevitably occur (for example, "In 1940 . . . the President's opponent, Thomas E. Dewey . . . ", p. 473), and on the whole the book is well edited. This reader would *still* like to find footnotes at the bottom of each page, but he is obviously one of a rapidly shrinking minority. The authors should be commended for the essays in the Appendix on "Running for Office", "A Career in the Civil Service" and "Entering the For-

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eign Service". The bibliography is excellent and should free instructors from the often tedious burden of drawing up supplementary book lists. Professors Burns and Peltason have positively challenged the "seed catalogue" technique in the writing of American Government texts. For this they deserve our gratitude, even though we may wish that they had been a bit less strident. It is always well for our discipline to be reminded that excellence is no excuse for dullness.—GENE W. SETZER, Columbia University.

Socialism and American Life, edited by Donald Drew Egbert and Stow Persons (2 vols. Princeton, Princeton University Press, 1952; xiv, 776; xiv, 575 pp. $10.00 each; $17.50 for 2 vols.). This enormous work, containing the writings of some fourteen men, is number four in the Princeton "Studies in American Civilization". It is a tremendous addition to this fine series, the goal of which is "to cast light on important aspects of American civilization considered, not in isolation, but with reference to the other cultures which have influenced . . . the United States." So seriously has this dictum been taken that concerning volume one, which contains the text and is 776 pages long (volume two is an exhaustive descriptive and critical bibliography), the general aspect is one of an unabridged encyclopaedia which contains references to practically everything. It almost seems that socialism in American life must have been either much more than is here indicated, or much much less. The editors suggest three basic criticisms that might be given this book. Conservatives may charge that several of the participants "are convinced socialists of one variety or another"; to some it will seem that the book "teaches socialism"; and for others it may fail because *some* of the writers are neither Marxists or socialists. These are all possibilities but the concern here is to ask the question whether, by sheer bulk alone, a picture of American civilization can be obtained. The editors' appropriately detailed introduction, which gives the terminology and a listing of types of socialism, is followed by fourteen chapters which consider socialism from many angles. Basically topical, the chapters have a sense of chronology and are focused on specially selected subjects. Professor Harbison of Princeton commences the discussion (each chapter is based on a lecture originally delivered at Princeton) with an analytical account of socialism in medieval economy through 1848. This is followed by "European Socialism since 1848" which was written by Harry W. Laidler, who for many years has been a member of the Socialist party. The sixth chapter, a book in itself (190 pages), is a long but extremely useful account entitled "The Background and

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Development of Marxian Socialism in the United States" and was written by Daniel Bell, labor editor of *Fortune*. One of the most exciting parts of the book was that written by Paul M. Sweezy, who, the editors announce, " writes from a Marxist point of view." His discussion on the influence of Marxian economics on American thought and practice is clearly an addition to American intellectual history and of much value in helping to determine an aspect of socialism in American life. Professor Egbert's contribution called " Socialism and American Art " is a fine example of the extent to which this book goes in attempting to " cast light on important aspects of American civilization ", and his sixty-one pictures are, in themselves, noteworthy. There is no unity to this book; it has no thesis; it remains a collection of published papers on " Socialism in American Life " and as such must be considered. If American civilization cannot be treated (as the editors suggest) " by any one man or from any single standpoint," it is to be wondered, then, whether American civilization can be treated adequately at all.—DONALD N. BIGELOW, Columbia University.

In his *The New Science of Politics* (Chicago, The University of Chicago Press, 1952; xiii, 193 pp. $3.00) Eric Voegelin applies the method of mystic realism to the problem of social representation. In this view representation is the appearance of universals as concrete symbols, and the universal symbolized by society is man. Voegelin therefore regards society as a collective effort to represent the human essence as a concrete historical fact. Social institutions, political structures, and individual personalities are held to be mere forms of articulation, inferior grades of reality through which the essence gains concrete existence. Voegelin denies, however, that the truth of humanity can ever be embodied in a concrete social order. For him the essence of man is the inexhaustible Whole, the transcendent God which can be represented only in the intuitions of the soul. Through mystic experience man discovers that society represents a reality beyond itself, that social representation is the immanence of God. But although he assumes that man can never achieve perfection in society, Voegelin denies that the gap between man and God, existence and essence, representation and reality, is absolute. Immanence is mediation, and through knowledge of the bond between nature and supernature the individual is reconciled to existence. Accordingly, the aim of political thought, for Voegelin, is to intuit the order of the state within the universal chain of being. The truth of political theory is *sophia*—knowledge of the way to reality. The truth of political science is *prudentia*—knowledge of the limitations of social existence. After

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expounding this scheme in the first half of his book, Voegelin launches into a bitter polemic against the political civilization of the West. He defines "occidental modernity"—from Joachim of Flora to Stalin—as the expansion of the "Gnostic heresy". It consists in the belief that man has the power to realize his essence on earth, from which follows the divinization of man and society as well as eschatological expectations of a perfect community to be realized in the historical future. Gnostic man, argues Voegelin, is a permanent revolutionary, for he must reject any concrete social representation as "imperfect". He must also be a totalitarian, for he can express his futuristic programs only as an unending war against the soul. In view of this alleged threat to civilization Voegelin calls for the "end of modernity", both in theory and practice, and predicts a return to theocentric traditions by the more stable nations of the West. Despite its undoubtable brilliance, *The New Science of Politics* adds little to the existing corpus of antirationalist philosophies of politics. Voegelin's theory of immanence harks back to Edmund Burke and to continental Romanticism; his idea of society as a symbol has been explored by Spengler; his "dialectic" of the "modernist heresy" has been elaborately stated by Donoso Cortes. If Professor Voegelin had acknowledged these forebears and analyzed their contributions, he might have clarified the social implications of his own position. At present his argument ends in a dogmatic rejection of Western liberalism, while any constructive social insight it may possess is lost in a maze of neo-Platonist terminology. —Julian H. Franklin, Columbia College.

In *Die Monarchie im modernen Staat* (Frankfurt am Main, Alfred Metzner Verlag, 1952; 151 pp. DM 7.80) Karl Loewenstein, a one-time German refugee in this country and presently a professor of political science at Amherst College, proposes to investigate the character and the philosophy of the phenomenon "monarchy" especially for the average German—we follow Dr. Loewenstein's preface—since he is always advised to look at the Scandinavian countries, the Netherlands or Belgium, all of them monarchies, as model democracies. There is a definite merit in Loewenstein's work, for he approaches the problem everywhere with a strong critical sense—he proceeds according to an excellent outline of his investigation which leads to the result that none of the Western European monarchical systems could be easily "translated" into German, just as for instance the "American Way of Life" could not be made applicable to every problematical situation a nation may find itself in as last and lasting solution and cure-all.

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The author most definitely takes a very dim view of restorations. The weakness of the book lies in many inaccuracies which should not have slipped into the text even if it is destined for the *gebildeten und interessierten Laien* rather than for the *Fachmann* (p. 11). As a political scientist the author should not always speak of a king of England, since such is not the title of the king of Great Britain. A picture of the Dutch royal couple mentions the *Krönung* in its legend though the Dutch are very sensitive in this question; no coronation takes place in that democratic monarchy but just an inauguration. Loewenstein most definitely gives a wrong picture of the British king's authority in the Privy Council: his personal power as *King-in-Council* is uncontested. Among the territorially small monarchies the State of the Vatican is definitely forgotten: this is a very interesting absolutistic and elective monarchy. Most discouraging are the author's statements about Austria-Hungary: he calls the later Emperor Franz Joseph "bigot, narrow and uneducated" (p. 144), which only proves that the author, himself a native of Central Europe, is completely unfamiliar with the outstanding works on this ruler, like the biography by Joseph Redlich, the volumes on "The Dual Monarchy" by Robert Kann and—last not least—the recently published letters the Emperor sent to his friend, Frau von Schratt. The book cannot be recommended as a German reader—at least not in its present form. The style is sloppy and quite a few obvious grammatical and syntactical errors will offend any connoisseur of the German language. However, it has raised a question and has attempted to answer it.—ROBERT RIE, Clark College.

Published under the auspices of The Russian Research Center of Harvard University, *Titoism and the Cominform* (Cambridge, Harvard University Press, 1952; viii, 243 pp. $4.00) by Adam B. Ulam is yet another addition to the ever-growing political literature on present-day Yugoslavia, the U.S.S.R. and the satellite states. The author has carefully collected and read the existing published materials: the documents, the party polemics and resolutions, the newspapers, the speeches and the memoirs of the major and minor characters of the Yugoslav-Cominform drama. As a result of his research Mr. Ulam is able to define Titoism as an "organic disease of Communist Parties when in power." He treats of the problems and conflicts which arise when the Communist—no longer an agitator railing against the "inequities of capitalist society"—has seized power as a commissar responsible for his actions not only to his party but to a supranational

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political unit as well. By collecting the many scattered references and sources on the subject of the Cominform and the Communist parties of Eastern Europe—particularly that of Poland—Mr. Ulam has rendered a useful service. But because he tends to isolate political developments in Eastern and Central Europe from international affairs as a whole, he falls into the error of handling domestic questions as a backwater apart from the mainstream of politics. This is particularly true in his analysis of the Polish Communist party's dissolution in 1938 as an interparty struggle and his uncritical acceptance of the "non-expansionist" phase of Yugoslav nationalism. He is seemingly unaware of the close political-military relationship in Partisan warfare, and implies a dichotomy that certainly did not exist in the formative days of the Tito régime. On the international scene, Mr. Ulam reveals little understanding of the goals and techniques, or even the problems, of Yugoslav diplomacy in 1940-41 when he flatly declares, without supporting evidence, that the government of Yugoslavia had become subservient to the Axis and was pro-Axis. And he endows Yugoslavia's signing of the Tripartite Pact with more significance than it deserves when he ignores entirely the three Ribbentrop letters which accompanied and modified it. He affords the reader no insight into, nor cogent analysis of, the origins of the Cominform nor of its purpose in East European political life, so important to the core of his argument. Nor does he relate the Yugoslav-Bulgar decisions regarding Macedonia as exemplified by the Bled Agreement of August 1947 to the Greek Civil War, to the position taken by the Vafiades "Free Greek" government and the Soviet government in December 1947 and finally to the Yugoslav-Soviet break of the following year. Despite these omissions Mr. Ulam's work is a welcome contribution to the understanding of Titoism as a political phenomenon. Within its limitations the book is a sturdy corrective to the many ephemeral reports that have appeared in the last few years.—J. B. HOPTNER, New York City.

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